

209 CMR: DIVISION OF BANKS AND LOAN AGENCIES

209 CMR 33.00: CONVERSION BY CO-OPERATIVE BANKS AND SAVINGS BANKS FROM
MUTUAL TO STOCK FORM

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33.01: Scope

No co-operative bank or savings bank shall convert to a capital stock form of organization without written approval of the commissioner, pursuant to the provisions of 209 CMR 33.00, except as the commissioner may otherwise provide in supervisory cases in accordance with 209 CMR 33.13 through 33.20.

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33.02: Definitions

As used in 209 CMR 33.00, the following definitions apply, unless the context otherwise requires:

Affiliate. An "affiliate" of, or a person "affiliated" with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

Applicant. An "applicant" is a co-operative bank or a savings bank which has applied to convert to a stock form bank pursuant to 209 CMR 33.00.

Application. The term "application" shall mean an application containing such information as described in 209 CMR 33.04(1).

Associate. The term "associate" when used to indicate a relationship with any person, means

- (a) Any corporation or organization (other than the applicant or a majority-owned subsidiary of the applicant) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of 10% or more of any class of equity securities,
- (b) Any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, and
- (c) Any relative or spouse of such person or any relative of such spouse, who has the same home as such person or who is a director or trustee or officer of the applicant or any of its parents or subsidiaries.

Bank. The term "bank" has the same meaning as in M.G.L. c. 167, § 1.

Beneficial Owner; Beneficial Ownership. The term "beneficial owner" or "beneficial ownership" of a security shall have the same meaning and shall be determined in the same manner as Rule 13d-3, promulgated under Section 13(d) (15 U.S.C. 78m(d)) of the Securities Exchange Act of 1934, as amended.

Board. The term "board" refers to the board of trustees of an existing mutual savings bank or the board of directors of an existing co-operative bank.

Broker-Dealer. The term "broker-dealer" means any person who engages either for all or part of his time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

Capital Stock. The term "capital stock" refers to the stock issued by a co-operative bank or a mutual savings bank which complies with the requirements of 209 CMR 33.00. Capital stock is any type of equity security permitted under M.G.L. c. 156B.

Community. The term "community" shall mean the local community or communities that comprise the bank's entire community as delineated by the bank pursuant to M.G.L. c. 167, § 14 or such greater area as the commissioner may approve.

Commissioner. The term "commissioner" means Commissioner of Banks.

Control. The term "control" (including the terms "controlling", "controlled by", and "under common control With") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

Converted Bank. The term "converted bank" shall mean a savings bank or co-operative bank that has converted to a stock form bank pursuant to 209 CMR 33.00.

Converting Bank. The term "converting bank" shall mean a savings bank or co-operative bank that is in the process of converting to stock form pursuant to 209 CMR 33.00.

Co-operative Bank. The term "co-operative bank" shall mean a bank subject to the provisions of M.G.L. c. 170.

33.02: continued

Corporators. The term "corporators" refers to the corporators of an existing mutual savings bank.

Deposit Insurance. The term "deposit insurance" shall mean insurance of a bank's deposits as provided for by M.G.L.

Directors. The term "directors" refers to the directors of an existing co-operative bank.

Eligibility Record Date. The term "eligibility record date" means the record date for determining eligible account holders of a converting bank.

Eligible Account Holder. The term "eligible account holder" means any person holding a qualifying deposit in the applicant as of the eligibility record date.

Employee. The term "employee" does not include a trustee, director or officer.

NON-TEXT PAGE

33.02: continued

Group Acting in Concert. The term "group acting in concert" means persons seeking to combine or pool their voting or other interests in the securities of an issuer for a common purpose, pursuant to any contract, understanding, relationship, agreement or other arrangement, whether written or otherwise. When person act together for such purpose, their group is deemed to have acquired their stock.

Holding Company. The term "holding company" shall mean a company seeking to acquire one or more converted banks pursuant to 209 CMR 33.00.

Information Documents. The term "information documents" shall mean documents distributed to corporators of a savings bank or shareholders of a co-operative bank pursuant to a plan of conversion as described in 209 CMR 33.07.

Liquidation Account. The term "liquidation account" shall mean the account described in 209 CMR 33.05(12).

Market Maker. The term "market maker" means a broker-dealer who, with respect to a particular security,

- (a) regularly publishes a bona fide, competitive bid and offer quotations in a recognized inter-dealer quotation system; or
- (b) furnishes bona fide competitive bid and offers quotations on request; and
- (c) is ready, willing and able to effect transactions in reasonable quantities at his quoted prices with other brokers or dealers.

Material. The term "material", when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters as to which an average prudent investor should reasonably be informed before purchasing capital stock of the applicant, or matters as to which an average prudent bank corporator or shareholders should reasonably be informed in voting upon the plan of conversion of the applicant.

Offer. The term "offer" or "offer to buy" includes every offer to buy or acquire, solicitation of an offer to dispose of or sell, tender offer for, or request or invitation for tender of, a security or interest in a security for value. The term "offer to sell" or "offer of sale" shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. These terms shall not include preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are or are to be in privity of contract with an applicant.

Officer. The term "officer" shall mean the chairman of the board, the president, any officer of the level of vice president or above, the clerk, and the treasurer.

Person. The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization or similar association, a government or political subdivision or a group acting in concert.

Plan of Conversion. The term "plan of conversion" shall mean a plan adopted by a savings bank or co-operative bank in order to convert to a stock form bank pursuant to 209 CMR 33.00.

Purchase. The terms "purchase" and "buy" include every contract to purchase, buy, or otherwise acquire a security or interest in a security for value.

Qualifying Deposit. The term "qualifying deposit" means deposit accounts of all types offered by the applicant bank, NOW account deposits, certificates of deposit, demand deposits, and such other types of deposit accounts as may now or from time to time hereafter be authorized by state or federal law and/or regulations, including IRA accounts and Keogh plans for which the applicant acts as custodian or trustee. It does not include repurchase agreements or savings bank life insurance policies. The Plan of Conversion may provide that deposit accounts with deposit balances of less than \$50 (or such lesser sum as may be specified in the Plan) shall not constitute qualifying deposits.

Regulations. The term "regulations" shall mean this 209 CMR 33.00.

33.02: continued

Restricted Stock. The term "restricted stock" shall mean stock subject to a restriction on the timing of its sale as set forth in 209 CMR 33.05(16).

Sale. The terms "sale" and "sell" include every contract of sale or disposition of a security or interest in a security for value. Such terms do not include any exchange of securities in connection with a merger, consolidation or acquisition approved by the commissioner.

Savings Bank. The term "savings bank" shall have the same meaning as in M.G.L. c. 168, § 1.

Security. The term "security" includes any note, stock, treasury stock, bond, debenture, transferable share, investment contract, voting-trust certificate, or in general, any instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing. Without limiting the generality of its meaning, the term "security" includes nontransferable subscription rights issued pursuant to a plan of conversion.

Shareholder. The term "shareholder" refers to the shareholder of an existing co-operative bank.

Solicitation; Solicit. The terms "solicitation" and "solicit" refer to the furnishing of information documents to inform corporators or shareholders of the plan of conversion and/or to influence their vote.

Stock Form Bank. The term "stock form bank" shall mean a bank that is or becomes, as a result of 209 CMR 33.00, owned by stockholders.

Subscription Offering. The term "subscription offering" refers to the offering of shares of capital stock, through nontransferable subscription rights issued to:

- (a) Eligible account holders and supplemental eligible account holders.
- (b) Directors, trustees, corporators, officers and employees.

Subsidiary. A "subsidiary" of a specified person is an affiliate controlled by such person, directly or indirectly through one or more intermediaries.

Supervisory Case. The term "supervisory case" shall have the same meaning as in 209 CMR 33.13 through 33.20.

Supplemental Eligibility Record Date. The term "supplemental eligibility record date" means the supplemental record date for determining supplemental eligible account holders of a converting bank.

Supplemental Eligible Account Holder. The term "supplemental eligible account holder" means any person holding a qualifying deposit as of the supplemental eligibility record date, except officers, directors, trustees, corporators and their associates.

Trustees. The term "trustees" refers to the trustees of an existing savings bank.

Underwriter. The term "underwriter" means any person who has purchased from an applicant with a view to, or offers or sells for an applicant in connection with, the distribution of any security, or participates or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or broker-dealer not in excess of the usual and customary distributor's or seller's commission. The term "principal underwriter" means an underwriter in privity of contract with the applicant or other issuer of securities as to which he is the underwriter.

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33.03: General Rules for Conversions

Except as may be authorized by the commissioner, no application for conversion shall be approved by the commissioner if:

- (1) The plan of conversion adopted by the applicant's board of directors or trustees does not comply with the provisions of 209 CMR 33.00;
- (2) The conversion would result in any reduction of the bank's reserves and net worth;
- (3) The conversion would result in a taxable reorganization of the applicant under the Internal Revenue Code of 1954, as amended; or
- (4) The converted bank would not have deposit insurance.

33.04: Procedural Requirements

(1) An applicant desiring to convert in accordance with 209 CMR 33.00 shall file an application for approval of the plan of conversion in the form required by the commissioner. Such application shall contain:

- (a) A copy of the minutes of the board of trustees or directors meeting authorizing the conversion and approving the plan of conversion with the clerk's attestation. The affirmative vote must be by at least 2/3 of all trustees or directors of the applicant;
- (b) A copy of the proposed plan of conversion;
- (c) A copy of the materials to be forwarded to corporators or shareholders relative to voting on the plan of conversion;
- (d) The proposed amended and restated articles of organization and/or charter of the converting bank;
- (e) Any information concerning any proposed or actual benefit substantially changing the terms and conditions of compensation, office and employment of a director, trustee, corporator, or officer of an applicant bank which is directly attributable to such conversion or any potential merger, acquisition or purchase within three years subsequent to such conversion. In the case of any such actual benefit, the required information shall apply to all changes in terms and conditions occurring during the twelve months preceding the date of the board meeting authorizing the conversion.
- (f) A written summary of all pending litigation to which the applicant is party.
- (g) A copy of the confirmation of the continuation of deposit insurance from the state and, if applicable, from the federal deposit insurer.
- (h) An estimated budget of conversion expenses including:
 1. Legal;
 2. Postage and Mailing;
 3. Printing;
 4. Underwriting;
 5. Appraisal;
 6. Transfer Agent;
 7. Auditing and Accounting;
 8. Advertising;
 9. Other (specify). (The applicant shall exclude regular officer and employee salaries and wages but shall include overtime, consultant fees and other compensation to be paid exclusively as a result of the conversion).
- (i) A copy of the applicant's request for a ruling from the U.S. Internal Revenue Service (and the ruling itself which shall be submitted immediately upon receipt by the applicant) or a written tax opinion from the applicant's counsel, with respect to the federal tax consequences of the conversion.
- (j) A copy of the applicant's most recent Community Reinvestment Act Statement.
- (k) Any other information which the commissioner may require.

33.04: continued

- (2)(a) A bank which is considering converting pursuant to 209 CMR 33.00 and its directors, trustees, corporators, officers and employees shall keep such consideration in the strictest confidence and shall only discuss the potential conversion as would be consistent with the need to prepare information for filing an application for conversion. Should this confidence be breached the commissioner may require remedial measures including:
 1. A public statement by the bank that its board is currently considering converting pursuant to 209 CMR 33.00;
 2. Providing for an eligibility record date which shall be as of such a date prior to the adoption of the plan by the converting bank's board as to assure the equitability of the conversion;
 3. Limitation of the subscription rights of any person violating or aiding the violation of 209 CMR 33.04 to an amount deemed appropriate by the commissioner; and
 4. Any other actions the commissioner may deem appropriate and necessary to assure the fairness and equitability of the conversion.
 - (b) If it should become essential as a result of rumors prior to the adoption of a plan of conversion by the applicant bank's board, a public statement limited to that purpose may be made by the applicant.
- (3) The commissioner shall notify the applicant upon a determination that the application is complete. The applicant shall thereafter publish a public announcement of its application to convert in a newspaper having general circulation in each community wherein an office of the applicant is located or such other locations as may be satisfactory to the commissioner. Three such announcements shall be published, the first being as close to the date of the determination of completion of the application pursuant to 209 CMR 33.04 as may be practical, the second during the next week, and the final notice during the third week. Such notice shall also be posted in each office of the applicant for at least 21 days.
- (4) Upon the request of the applicant, the commissioner may designate one or more portions of the application as confidential pursuant to the provisions of 209 CMR 33.04. A statement shall be submitted by the applicant bank briefly setting forth the grounds on which information shall be treated as confidential. Only the information which the commissioner deems to be immaterial to the vote of the corporators or shareholders on a plan of conversion and the purchase of stock pursuant to the subscription, direct community or public offering may be withheld from public availability. The applicant will be advised of any decision by the commissioner to make public information designated as "confidential" by the bank. Even though sections of the application are considered "confidential" as far as public inspection is concerned, to the extent he deems necessary the commissioner may comment on such "confidential" submissions in any public statement in connection with his decision on the application without prior notice to the applicant bank.
- (5) The commissioner shall review the application and approve the application and the plan of conversion if he finds the conversion fair to depositors, and that the bank's deposits will be adequately insured, that other banks will not be adversely affected and that the public's access to credit within the bank's community will not be adversely affected. The commissioner may require changes in information documents submitted to assure full and adequate disclosure.
- (6) Following receipt of the commissioner's approval of the application for conversion, the plan of conversion and proposed amended and restated articles of organization and/or charter and any information pursuant to 209 CMR 33.04(1)(e) shall be submitted to the shareholders of a cooperative bank or to the corporators of a savings bank for approval at a special meeting called for that purpose or at the annual meeting.
 - (a) In the matter of a savings bank, notice of the meeting to consider the plan of conversion and amendments to corporate forms must be sent to each corporator, postage prepaid, and include all materials previously approved by the commissioner, including those materials listed in 209 CMR 33.04(6) not less than seven days prior to the meeting. Approval of 2/3 of all corporators present and voting will be required. Proxy voting is not allowed.

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33.04: continued

- (b) In the matter of a co-operative bank, notice to all shareholders of the meeting to consider the plan of conversion and amendments to corporate forms must be in a form previously approved by the commissioner and include those materials listed in 209 CMR 33.04(6), which notice must be given not less than seven days prior to the date of the meeting, postage prepaid, at the last address shown on the books of the bank. Approval of more than 2/3 of shareholders present and voting is required. Proxy voting is not allowed.
 - (c) In the matter of a co-operative bank, a record date for determining the shareholders eligible to vote at meeting called to consider a plan of conversion shall not be more than 60 days nor less than ten days prior to the date of such meeting, without prior approval of the commissioner.
- (7) An applicant whose plan of conversion has been approved by the incorporators or shareholders shall file the following with the commissioner:
- (a) A certified copy of the resolution and the total number of votes eligible to be cast.
 - (b) The number of shareholders or incorporators present.
 - (c) The total number of votes cast in favor and against the plan of conversion.
- (8) If the commissioner finds the record complete upon receipt of the information required by 209 CMR 33.04(7), the commissioner may authorize the sale of the stock of the converting bank.
- (9) Upon receipt of notification from the applicant that it has received commitments for purchase of all shares of capital stock offered in the conversion, the commissioner shall endorse his approval on the changes in the amended and restated articles of organization and/or charter.
- (10) Upon filing and acceptance of such amended and restated articles of organization and/or charter by the Secretary of the Commonwealth, the bank shall become a stock form bank.
- (11) Subsequent to the conversion to stock form in accordance with 209 CMR 33.00, the stockholders of the converted bank shall be the entire and exclusive owners of the bank. Depositors shall thereupon have only a creditor relationship to the bank, both with respect to their deposits and with respect to their contingent interests, if any, in the liquidation account. The provisions of M.G.L. c. 168, §§ 8 through 17, shall no longer apply to a savings bank that is a converted bank and the provisions of M.G.L. c. 170, §§ 8 through 10, shall no longer apply to a co-operative bank that is a converted bank. Instead, a converted bank shall be subject to the provisions of M.G.L. c. 172, §§ 1, 11 through 16, 19, 20, 22, 24 through 28, 30 and 31. Reference to incorporators and trustees of savings banks in applicable statutes shall mean directors in a stock savings bank.
- (12) The corporate existence of the converted bank shall be a continuation of the converting bank.
- (13) A final accounting of all actual conversion expenses shall be filed with the commissioner no later than 90 days from the date the conversion is consummated. The commissioner may, on receipt of a written explanatory request, extend such period as he may deem appropriate.

33.05: Required Provisions of a Plan of Conversion

The plan of conversion shall:

- (1) State the business purposes to be accomplished by the plan of conversion.

33.05: continued

(2) Provide that the converting bank shall issue and sell its capital stock at a total price equal to the estimated pro forma market value of such stock in the converted bank based on an independent valuation.

(3) Provide that each eligible account holder shall receive without payment, nontransferable subscription rights to purchase capital stock in an amount equal to the greater of the maximum purchase limitation established for the public offering pursuant to 209 CMR 33.05(6)(a), 1/10 of 1% of the total offering of shares or 15 times the product (rounded down to the next whole number) obtained by multiplying the total number of shares of capital stock to be issued by a fraction of which the numerator is the amount of the qualifying deposit of the eligible account holder and the denominator is the total amount of qualifying deposits of all eligible account holders in the converting bank. If the allotment made in this paragraph results in an oversubscription, shares shall be allocated among subscribing eligible account holders so as to permit each such account holder, to the extent possible, to purchase a number of shares sufficient to make his total allocation equal to 100 shares. Any shares not so allocated shall be allocated among the subscribing eligible account holders on such equitable basis, related to the amounts of their respective qualifying deposits as may be provided in the plan of conversion.

(4) Provide that nontransferable subscription rights to purchase capital stock received by officers, corporators, trustees, and directors and their associates of the converting bank based on their increased deposits in the converting bank in the one year period preceding the eligibility record date shall be subordinated to all other subscriptions involving the exercise of nontransferable subscription rights to purchase shares.

(5) Provide that, in plans of conversion involving an eligibility record date that is more than 15 months prior to the date of the latest amendment to the application for conversion filed prior to approval by the commissioner, a supplemental eligibility record date be determined whereby each supplemental eligible account holder of a converting bank shall receive without payment, nontransferable subscription rights to purchase supplemental shares in an amount equal to the greater of the maximum purchase limitation for the public offering pursuant to 209 CMR 33.05(6)(a), 1/10 of 1% of the total offering of shares or 15 times the product (rounded down to the next whole number) obtained by multiplying the total number of shares of capital stock to be issued by a fraction of which the numerator is the amount of the qualifying deposit of the supplemental eligible account holder and the denominator is the total amount of the qualifying deposits of all supplemental eligible account holders in the converting bank on the supplemental eligibility record date.

(a) Subscription rights received pursuant to 209 CMR 33.05(5) shall be subordinated to all rights received by eligible account holders to purchase shares pursuant to 209 CMR 33.05(3).

(b) Any nontransferable subscription rights to purchase shares received by an eligible account holder in accordance with 209 CMR 33.05(3) shall be applied in partial satisfaction of the subscription rights to be distributed pursuant to 209 CMR 33.05(5).

(c) In the event of an oversubscription for supplemental shares pursuant to 209 CMR 33.05(5), shares shall be allocated among the subscribing supplemental eligible account holders as follows:

1. Shares shall be allocated among subscribing supplemental eligible account holders so as to permit each such supplemental account holder, to the extent possible, to purchase a number of shares sufficient to make his total allocation (including the number of shares, if any, allocated in accordance with 209 CMR 33.05(3)) equal to 100 shares.

2. Any shares not allocated in accordance with 209 CMR 33.05 (5)(c)1. shall be allocated among the subscribing supplemental eligible account holders on such equitable basis, related to the amounts of their respective qualifying deposits as may be provided in the plan of conversion.

33.05: continued

(6) Provide that any shares of the converting bank not sold in the subscription offering shall be sold in a public offering through an underwriter and/or directly by the converting bank in a direct community offering, subject to the applicant demonstrating to the commissioner the feasibility of the method of sale and to such conditions as are provided in the plan of conversion. Such conditions shall include, but not be limited to:

- (a) A condition limiting purchases by persons and their associates in this phase of the offering to a number of shares or a percentage of the total offering so long as such limitation does not exceed 5% of the total offering of shares. The limitations provided for in 209 CMR 33.05(7) and (8) shall apply to shares acquired in this phase of the offering.
- (b) A condition requiring that orders for stock in any public offering shall be filled up to a maximum of 2% of the total offering and thereafter remaining shares shall be allocated on an equal number of shares per order until all orders have been filled.
- (c) A condition requiring the stock offered and sold in the public offering be offered and sold in a manner that will achieve the widest distribution of the stock.
- (d) A condition that the direct community offering give a preference to natural persons residing in the bank's community as defined in accordance with M.G.L. c. 167, § 14.

(7) Provide that the number of shares which any person together with any associate or group of persons acting in concert may subscribe for or purchase as a result of the plan of conversion shall not exceed 5% of the total offering of shares. For purposes of this paragraph, the members of the converting bank's board shall not be deemed to be associates or a group acting in concert solely as a result of their board membership.

(8) Provide that the number of shares which officers, trustees, corporators, and directors of the converting bank and their associates may purchase as a result of the plan of conversion shall not exceed 30% of the total offering of shares.

(9) Provide that without the prior written approval of the commissioner, no officer or director of the converted bank or their associates shall purchase capital stock of a bank from the converted bank for a period of three years following the conversion.

(10) Provide that the sales price of the shares of capital stock to be sold pursuant to the plan of conversion shall be a uniform price; and specify the underwriting and/or other marketing arrangements to be made to assure the sale of all shares not sold in the subscription offering.

(11) Provide that each savings account holder of the converting bank shall receive, without payment, a withdrawable deposit account or accounts in the converted bank equal in withdrawable amount to the withdrawal value of such account holder's deposit account or accounts in the converting bank.

(12) Provide for the establishment and maintenance of a liquidation account for the benefit of eligible account holders and supplemental eligible account holders in the event of a subsequent complete liquidation of the converted bank.

(a) Liquidation Account.

- 1. Each converted bank shall, at the time of conversion, establish a liquidation account in an amount equal to the net worth of the converting bank set forth in its latest statement of financial condition contained in the final prospectus or offering circular. The function of the liquidation account is to establish a priority on liquidation and, except as provided in 209 CMR 33.05(12)(a)2. and 3., the existence of the liquidation account shall not operate to restrict the use or application of any of the net worth accounts of the converted bank.
- 2. The liquidation account shall be maintained by the converted bank for the benefit of eligible account holders and supplemental eligible account holders who after the conversion continue to hold the deposit accounts held by them on the eligibility record date and/or the supplemental eligibility record date. Each such eligible account holder and supplemental eligible account holder shall, with respect to each deposit account held, have exclusively a contingent creditor relationship to the bank with respect to that portion of the liquidation account balance ("subaccount").

33.05: continued

3. In the event of a complete liquidation of the converted bank (and only in such event), each eligible account holder and supplemental eligible account holder shall be entitled to receive a liquidation distribution from the liquidation account, in the amount of the then current adjusted subaccount balances for deposit accounts then held, before any liquidation distribution may be made with respect to capital stock. No merger, consolidation, purchase of bulk assets with assumption of deposit accounts and other liabilities, or similar transactions, in deposit accounts and other liabilities, which the converted bank is not the surviving entity is considered to be a complete liquidation for this purpose. In such transactions, the liquidation account shall be assumed by the surviving entity.
4. The initial subaccount balance for a deposit account held by an eligible account holder and/or supplemental eligible account holder shall be determined by multiplying the opening balance in such liquidation account by a fraction of which the numerator is the amount of qualifying deposits in such deposit account on the eligibility record date and/or the supplemental eligibility record date, and the denominator is the total amount of qualifying deposits of all eligible account holders and supplemental eligible account holders in the converting bank on such dates. For deposit accounts in existence at both dates, separate subaccounts shall be determined on the basis of the qualifying deposits in such deposit accounts on such record dates. Such initial subaccount balance shall not be increased by additional deposits, and shall be subject to downward adjustment by withdrawal.
5. If the deposit balance in any deposit account of an eligible account holder or supplemental eligible account holder at the close of business on any annual fiscal year closing date subsequent to the respective record dates is less than either:
 - a. The deposit balance in such deposit account at the close of business on any other annual fiscal year closing date subsequent to the eligibility record date or supplemental eligibility record date, or
 - b. The amount of the qualifying deposit as of the eligibility record date or supplemental eligibility record date, then, the subaccount balance for such deposit account shall be adjusted by reducing such subaccount balance in an amount equal to the reduction in such a deposit balance. In the event of such downward adjustment, the subaccount balance shall not be subsequently increased, notwithstanding any increase in the deposit balance of the related deposit account. If any such deposit account is closed, the related subaccount balance shall be reduced to zero.

(13) Provide for an eligibility record date, which shall not be less than 90 days prior to the date of adoption of the plan of conversion by the converting bank's board.

(14) Provide that the holders of the capital stock of the converted bank shall have exclusive voting rights in the converted bank.

(15) Provide that the plan of conversion adopted by the applicant's board may be substantively amended by such board as a result of comments from regulatory authorities and at anytime thereafter with the concurrence of the commissioner; and that the conversion may be terminated by such board at any time prior to the meeting of corporators or shareholders called to consider the plan of conversion and at any time thereafter with the concurrence of the commissioner.

(16) Provide that, all shares of capital stock purchased by directors, trustees, corporators, and officers on original issue pursuant to the plan of conversion either directly from the bank (by subscription or otherwise) or from an underwriter of such shares, shall be subject to the restriction that such shares shall not be sold for a period of one year following the date of purchase, except in the event of death or substantial disability (as determined by the commissioner) of the director, trustee, corporator or officer, or upon the written approval of the commissioner.

33.05: continued

- (17) Provide that, in connection with shares of capital stock subject to restriction on sale for a period of time, pursuant to 209 CMR 33.00 that:
- (a) Each certificate for such stock shall bear a legend giving appropriate notice of such restriction;
 - (b) Appropriate instructions shall be issued to the transfer agent for the converted bank's capital stock with respect to applicable restrictions on transfer of any such restricted stock; and
 - (c) Any shares issued as a stock dividend, stock or otherwise with respect to any such restricted stock shall be subject to the same restrictions as may apply to such restricted stock.
- (18) State that capital stock to be issued pursuant to the plan of conversion will not be covered by deposit insurance.
- (19) Provide that the expenses incurred in connection with the plan of conversion shall be reasonable.
- (20) Contain no provision which the commissioner shall determine to be inequitable or detrimental to the applicant, its deposit account holders or other banks or contrary to the public interest.
- (21) Establish a time period within which the plan of conversion must be consummated. The time period shall not be more than 24 months from the date the board of directors or board of trustees approve the plan of conversion.
- (22) Provide that the converting bank shall:
- (a) promptly following the conversion register the securities issued in connection therewith pursuant to the Massachusetts General Laws and to the Securities Exchange Act of 1934 if either or both of such registrations are required under applicable law;
 - (b) use its best efforts to encourage and assist a market maker to establish and maintain a market for the securities issued; and
 - (c) use its best efforts to list those shares issued on a national or regional securities exchange or on the NASDAQ quotation system.
- (23) That the converting bank shall not loan funds or otherwise extend credit to any person to purchase the capital stock of the institution.
- (24) Provide that the converting bank shall maintain a copy of its application for conversion in its main banking office for public inspection.

33.06: Optional Provisions of a Plan of Conversion

Notwithstanding any other provisions of 209 CMR 33.00, in addition to the requirements of 209 CMR 33.05, the plan of conversion may provide any or all of the following:

- (1) That trustees, directors, officers, and employees of the converting bank, as part of the subscription offering, shall be entitled to purchase up to 30% of the total offering of shares of capital stock, but only to the extent that shares are available after satisfying the subscriptions of eligible account holders and supplemental eligible account holders. The share shall be allocated among trustees, directors, officers, and employees on an equitable basis such as by giving weight to the period of service, compensation and position of the individual, subject to a 5% limitation on the amount of shares which may be purchased by any one person, associate thereof, or group of affiliated persons or group of persons otherwise acting in concert. (shares purchased under 209 CMR 33.06 shall be aggregated with shares purchased under all sections when calculating limitations). For purposes of 209 CMR 33.06(1), members of the converting bank's board shall not be deemed to be associates or a group acting in concert solely as a result of their board membership.

33.06: continued

- (2) Any account holder receiving rights to purchase stock in the subscription offering, shall also receive, without payment, nontransferable subscription rights to purchase up to 1% of the total offering of shares of capital stock, to the extent that such shares are available after satisfying the subscriptions provided for under 209 CMR 33.05(3) and (5) subject to such conditions as may be provided in the plan of conversion. In the event of an oversubscription for such additional shares, the shares available shall be allocated among the subscribing eligible account holders and supplemental eligible account holders on such equitable basis, related to the amounts of their respective subscriptions, as may be provided in the plan of conversion. Where possible, such subscriptions shall be allocated in such a manner that total purchases by eligible account holders and supplemental eligible account holders shall be rounded to the nearest 100 shares.
- (3) The number of shares which any person, or group of persons, associated with each other or otherwise acting in concert, may purchase may be made subject to a limit of not less than 1% of the total offering of shares.
- (4) Any person exercising subscription rights to purchase capital stock may be required to purchase a minimum of up to 25 shares to the extent the shares are available (but the aggregate price for any minimum share purchase shall not exceed \$500).
- (5) The converting bank may issue and sell, in lieu of shares of its capital stock, units of securities consisting of capital stock and long-term warrants or other equity securities, in which event any reference in 209 CMR 33.00 to capital stock shall apply to such units of equity securities unless the context otherwise requires.
- (6) That, except as otherwise approved by the commissioner, the subscription offering shall commence within 45 days after the date of the meeting of corporators or shareholders for approval of the plan of conversion.
- (7) That purchases of stock pursuant to the public offering by any person together with any associate or group of persons acting in concert shall be limited to less than 10% of the total offering of shares, provided that orders for conversion stock exceeding 5% of the total offering shall not exceed in the aggregate 10% of the total offering.
- (8) Provide that with the approval of the commissioner, the converting bank may hold a direct community offering concurrently with the subscription offering.
- (9) That the commissioner may approve such other equitable provisions as may be necessary to avert imminent injury to the converting bank.

33.07 Information Documents

- (1) Information documents intended to inform corporators of a savings bank, or shareholders of a co-operative bank, previous to the vote on the plan of conversion may not be released until their content and use have been approved by the commissioner.
- (2) Information documents must be sent to all eligible voters in order to enable them to make an informed decision.
- (3)(a) No information documents or other communications, written or oral, sent by the bank, its management, or any other person in connection with the meeting to vote on a plan of conversion shall contain any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or omits information necessary to correct any statement in any earlier communication with respect to such meeting which become false or misleading.

33.07: continued

(b) The fact that information documents have been filed with or examined by the commissioner and cleared for use shall not be deemed to be a finding by the commissioner that such information documents are accurate or complete or not false or misleading, or that the commissioner has passed upon the merits of or approved any proposal contained therein. No representation contrary to the foregoing shall be made by any person.

(c) If information documents or other communications by management violate any provisions of 209 CMR 33.07, the commissioner may require remedial measures including:

1. Correction of any such violation by means of a retraction and new information documents;
2. Rescheduling of the meeting for a vote on the plan of conversion; and
3. Any other action the commissioner may deem appropriate under the circumstances in order to assure a fair vote.

33.08: Pricing and Sale of Securities

(1) Distribution of preliminary subscription and direct community offering circulars will not be permitted; such circulars must be in final form only. Any preliminary offering circular or prospectus for a public offering of unsubscribed shares which has been filed with the commissioner may be distributed in connection with such offering. No such preliminary offering circular or prospectus shall be distributed without the following legend printed in red on the cover thereof: "This Offering Circular has been filed with the Commissioner of Banks of the Commonwealth of Massachusetts, but has not been authorized for use in final form. Information contained herein is subject to completion or amendment. The securities covered hereby may not be sold nor may offers to buy be accepted prior to the time the Offering Circular is declared effective by the Commissioner of Banks of the Commonwealth of Massachusetts. This Offering Circular shall not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction." In addition, there will be printed on the cover of this preliminary public offering circular in bold print "Preliminary Offering Circular" along with its date of publication.

(2) Each final prospectus or offering circular as well as any advertisement, order form or instructions prepared by the converting bank and used by it to solicit and effectuate an offer to purchase shares of capital stock in the subscription, direct community and public offerings shall be submitted to the commissioner for his approval. Each preliminary or final prospectus or offering circular shall include a statement that the shares of capital stock are not subject to deposit insurance. No final prospectus or offering circular may be distributed unless approved and declared effective by the commissioner.

(3)(a) In considering the pricing information for the proposed stock issue, the commissioner will apply the following guidelines:

1. The appraisal report shall be prepared by persons independent of the applicant, experienced and expert in the area of corporate appraisals, and acceptable to the commissioner;
2. The appraisal report shall contain data that are sufficient to support the conclusions reached therein;
3. The appraisal report shall contain a complete and detailed description of the appraisal methodology employed; and

33.08: continued

4. To the extent that the appraisal is based on a capitalization of the pro forma income of the converted savings bank, the appraisal report must indicate the basis for determination of the income to be derived from the proceeds of the sale of stock and demonstrate the appropriateness of the earnings multiple used, including assumptions made as to future earnings growth. To the extent that the appraisal is based on a comparison of the proposed capital stock of the applicant with the outstanding capital stock of existing banks, the appraisal report must demonstrate the appropriate comparability of the form and substance of such outstanding capital stock and the appropriate comparability of such existing stock form banks in terms of such factors as size, market area, competitive conditions, profit history, and expected future earnings.
 5. The appraisal report shall be updated and filed with the commissioner prior to the pricing of the capital stock offered in the conversion.
- (b) In addition to the information required in 209 CMR 33.08(3)(a), the applicant shall submit information demonstrating to the satisfaction of the commissioner the independence and expertise of any person preparing appraisal report under 209 CMR 33.00. However, a person shall not be considered to lack independence by virtue of such person's participation in effecting a sale of capital stock under the plan of conversion or because such person receives a fee from the applicant for services rendered in connection with such appraisal.
- (4)(a) Promptly after the commissioner has declared the prospectus or offering circular for the subscription offering effective, the applicant shall distribute order forms for the purchase of capital stock in the subscription offering to all eligible account holders, supplemental eligible account holders (if applicable) and other persons who may subscribe for such shares under the plan of conversion.
- (b) Each order form shall be accompanied or preceded by the final prospectus or offering circular for the subscription offering and a set of instructions explaining how to properly complete such order forms.
- (c) Order forms shall be approved in writing by the commissioner prior to use.
- (d) The order form may provide that it may not be modified without the applicant's consent after its receipt by the applicant. If payment is to be made by withdrawal from a deposit account with the applicant, the applicant may, but need not, cause such withdrawal to be made upon receipt of the order form. If such withdrawal is made at any time prior to the closing date of the subscription offering, the applicant shall pay interest to the account holder on the account withdrawn as if such amount had remained in the account from which it was withdrawn until such closing date.
- (e) The mailing of a notice to all eligible account holders or supplemental eligible account holders (if applicable) with a request form to be returned to the converting bank by a reasonable date certain to request subscription or direct community offering materials described above shall satisfy the requirements of 209 CMR 33.08(4)(a).
- (f) The subscription offering period must run no less than 20 but no more than 45 days from the date of distribution of the subscription offering circular. Said period may be extended at the request of the applicant, subject to the approval of the commissioner pursuant to 209 CMR 33.08(5).
- (5)(a) The sale of all shares of capital stock of the converting bank to be made pursuant to a plan of conversion, including any sale in a public or other offering, shall be completed as promptly as possible and within 45 calendar days after the last day of the subscription period, unless extended by the applicant with the approval of the commissioner. The commissioner may make his approval contingent upon such conditions as he may deem appropriate.
- (b) Upon the occasion of any event, circumstance or change of circumstance which would be material to the investment decision of a subscriber in the subscription offering and of a community purchaser in a concurrent direct community offering, and which occurs after the expiration of the subscription offering or concurrent direct community offering, but before the commencement of the public offering or subsequent direct community offering, as the case may be, the converting bank shall file with the commissioner a post-effective amendment to any offering circular previously sent to subscribers and community purchasers, if applicable.

33.08: continued

(c) The converting bank shall distribute the post-effective amendment to each subscriber and each community purchaser, if applicable, immediately after the commissioner has approved and declared it effective. The converting bank shall grant to each subscriber and to each community purchaser, if applicable, the right to increase, decrease or rescind his subscription or purchase order (within the subscription or purchase limits prescribed by the converting bank's plan of conversion) for a period of time which shall be no less than ten days from the date the post-effective amendment was distributed or the period remaining in any extension of time granted by the commissioner pursuant to 209 CMR 33.08(5), whichever period ends later.

(6)(a) Prior to completion of a conversion, no person shall transfer or enter into any agreement or understanding to transfer, the legal or beneficial ownership of conversion subscription rights, or the underlying securities, to the account of another person.

(b) Prior to completion of a conversion, no person shall make an offer, or announcement of an offer or intent to make an offer, for any security of a converting bank issued or to be issued in connection with such plan of conversion.

(c) For a period of three years following the date of the completion of a plan of conversion, no person shall directly or indirectly offer to acquire or acquire the beneficial ownership of more than 10% of any class of an equity security of a bank converted in accordance with the provisions of 209 CMR 33.00, without prior written notice to the converted bank and the prior written approval of the commissioner. Where any person, directly or indirectly, acquires beneficial ownership of more than 10% of any class of any equity security of a bank converted in accordance with 209 CMR 33.00, without prior written notice to the converted bank and the prior written approval of the commissioner as required by 209 CMR 33.08, the securities beneficially owned by such person in excess of 10% shall not be counted as shares entitled to vote, shall not be voted by any person or counted as voting shares in connection with any matter submitted to the stockholders for a vote, and shall not be counted as outstanding for purposes of determining the affirmative vote necessary to approve any matter submitted to the stockholders for a vote, and the commissioner may take any further action pursuant to 209 CMR 33.11 as he may deem appropriate.

(7) 209 CMR 33.08(6)(a) and (b) shall not apply to a transfer, agreement or understanding to transfer, offer, or announcement of an offer or intent to make an offer which pertains only to securities to be purchased pursuant to 209 CMR 33.05(6) and has the prior written approval of the commissioner and/or to which the board of the savings bank or cooperative bank has, in advance, consented to in writing.

(8) 209 CMR 33.08(6)(b) and (c) shall not apply to any offer with a view toward public resale made exclusively to the converting bank or underwriters or selling group acting on its behalf.

(9) Unless made applicable by the commissioner by prior advice in writing, the prohibition contained in 209 CMR 33.08(6)(c) shall not apply to any offer or announcement of an offer which, if consummated, would result in the acquisition by a person, together with all other acquisitions by such person of the same class of securities during the preceding 12-month period of not more than 1% of the class of securities.

33.09: Conversions in Connection with Other Corporate Changes.

(1) A bank may convert to stock form, pursuant to 209 CMR 33.00, as part of a transaction in which a holding company is organized to acquire upon issuance all of the capital stock of the converted bank. In such a transaction, eligible account holders, and supplemental eligible account holders if applicable, shall receive, without payment, nontransferable rights to purchase the capital stock of the newly formed holding company, in accordance with 209 CMR 33.00, in lieu of all the capital stock of the converting bank and all of the shares of the capital stock of the holding company not purchased in the subscription offering shall

33.09: continued

be sold in a public offering through an underwriter and/or directly by the holding company in a direct community offering, subject to the applicant demonstrating to the commissioner the feasibility of the method of sale and to such conditions as are provided in the plan of conversion, including, but not limited to those specified in 209 CMR 33.05(6). The total price at which the capital stock shall be sold shall be based upon an appraisal, as provided for in 209 CMR 33.00. Unless clearly inapplicable or waived by the commissioner, all of the requirements of 209 CMR 33.01 through 33.12 shall apply to a conversion under 209 CMR 33.09.

(2) For a period of three years subsequent to a conversion made pursuant to 209 CMR 33.00, no converted bank nor any other bank, corporation, person or associate merging with or acquiring more than 10% of the shares of the converted bank shall make any agreements substantially changing any terms or conditions of compensation, office or employment of a converted bank's directors or officers directly attributable to any purchase or acquisition of shares or merger or any proposed purchase or acquisition of shares or proposed merger without the express vote of the holders of more than 2/3 of each class of capital stock of the converted bank voting at a meeting called for that purpose or at the annual meeting. 209 CMR 33.09 does not prohibit the converted bank from promoting, demoting, transferring or dismissing personnel nor does it include employment contracts, stock options or other employment arrangements or incentives not adopted in connection With the transactions described in the preceding sentence.

33.10: Reports

All converted banks shall file such reports as the commissioner may require.

33.11: Penalties for Violation of any Provision

The commissioner shall have the authority to issue, in the event of any violation of any of the provisions of 209 CMR 33.00, remedial measures, including:

- (a) Limitation of the subscription rights of any person;
- (b) Revocation of stock purchases by any person;
- (c) Suspension or Cancellation of the conversion; and
- (d) Civil penalties of not more than \$500 for each day that a violation occurs; and
- (e) Any other actions the commissioner may deem appropriate and necessary to assure fairness and equity.

33.12: Separability of 209 CMR 33.01 through 33.12

If any provision of 209 CMR 33.01 through 33.12, or the application of such provisions to any person or circumstance, shall be held invalid, the remainder of 209 CMR 33.00, and the application of such provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

33.13: Scope

The provisions of 209 CMR 33.13 through 33.20 (SUPERVISORY STOCK CONVERSIONS) shall govern the supervisory conversion of a savings bank or a co-operative bank to a stock form of organization. A supervisory stock conversion is a conversion authorized by the commissioner pursuant to a plan of conversion adopted by a savings bank or a co-operative bank which meets the requirements set forth in 209 CMR 33.16. The authorization of a supervisory stock conversion shall be in the discretion of the commissioner acting in accordance with provisions of 209 CMR 33.00.

33.14: Supervisory Stock Conversions

(1) A supervisory stock conversion is the sale of all of the converting bank's newly-issued capital stock to a third party or parties in a transaction in which the account holders of a savings bank have no subscription rights, the account holders of a co-operative bank have no voting or subscription rights and no liquidation account is established for the benefit of any account holders of a savings or co-operative bank.

(2) The corporate existence of the converted bank shall be a continuation of the converting bank.

33.15: Authorization of Supervisory Stock Conversions

The commissioner will consider authorizing a supervisory stock conversion if an applicant bank files an application containing the information and documents specified in 209 CMR 33.18 in accordance with the procedures specified in 209 CMR 33.19 and meets the requirements specified in 209 CMR 33.16.

33.16: Requirements for Supervisory Stock Conversions

Upon the filing of an application by a bank pursuant to 209 CMR 33.15, the commissioner may in his discretion authorize the supervisory stock conversion of a savings bank or a co-operative bank if all of the following requirements are met:

- (a) in the judgment of the commissioner the converted bank would be a viable entity under 209 CMR 33.17,
- (b) the commissioner has possession of or certified the bank, under the provisions of Massachusetts General Laws, and
- (c) upon liquidation of the bank, the commissioner finds there would be no equity value realizable by the mutual account holders. No application for conversion shall be approved by the commissioner unless he has received such evidence as he may require that the converted bank will have deposit insurance.

33.17: Viability of Converted Bank

For purposes of 209 CMR 33.13 through 33.20, a converting bank may be deemed a viable entity if it is determined by the commissioner that the net worth of the bank after conversion would be reasonably sufficient to absorb projected operating losses for a period of not less than three years after the date on which the bank becomes a stock form bank under the provisions of 209 CMR 33.19(4), without the application of financial assistance from Insurer(s). If the proposed conversion stock purchaser or purchasers guarantee to maintain the bank's net worth in an amount to be determined by the commissioner for a period of not less than three years after the effective date of conversion to stock form, the determination of the commissioner shall be based upon (i) the projected operating results of the bank over the period of the guarantee and (ii) the financial capability of the purchaser or purchasers to maintain net worth compliance.

33.18: Application for Supervisory Stock Conversions

A bank may apply for a supervisory stock conversion pursuant to 209 CMR 33.13 through 33.20 by filing the following information and documents in accordance with the procedures specified in 209 CMR 33.19:

- (1) A copy of the minutes of the board meeting authorizing the conversion with the clerk's attestation. The affirmative vote must be by at least two-thirds of all trustees or directors of the applicant.

33.18: continued

- (2) A copy of the proposed plan of conversion adopted by the board of the bank. The plan of conversion shall contain at a minimum the name and address of the bank; the names and addresses of the proposed purchasers of conversion stock and their relationship to the bank; the title, per-unit par value, number, and per-unit and aggregate offering price of shares of conversion stock to be authorized and issued; the number and percentage of shares of conversion stock to be purchased by each investor; the aggregate number and percentage of shares of conversion stock to be purchased by directors, trustees, corporators, officers and their associates; the form of consideration to be paid for the conversion stock; the bank's capital structure after conversion; and the closing date for the purchase. The plan of conversion shall also contain such other information and provisions as the commissioner may require.
- (3) A copy of all supervisory stock conversion agreements between the bank and the proposed conversion stock purchaser(s).
- (4) The proposed amended and restated articles of organization and/or charter of the converted bank.
- (5) Any information concerning any proposed or actual benefit substantially changing the terms and conditions of compensation, office and employment of a director, trustee, corporator or officer of an applicant bank which is directly attributable to such conversion or any potential merger, acquisition or purchase within three years subsequent to such conversion. In the case of any such actual benefit, the required information shall apply to all changes in terms conditions occurring during the twelve months preceding the date of the board meeting referred to in 209 CMR 33.18(1).
- (6) A business plan which shall contain a description of the proposed operating policies of the bank following the conversion, including a statement as to how the conversion proceeds will be used, and a projection of the bank's results of operations for the three years following the date on which the bank becomes a stock form bank under the provisions of 209 CMR 33.19(4). The bank shall specify the assumptions on which its projections are based.
- (7) Any other information which the commissioner may require.

33.19: Procedural Requirements

- (1) Filing of Supervisory Stock Conversion Application. A bank seeking to convert pursuant to 209 CMR 33.13 through 33.20 shall file its supervisory stock conversion application containing the information and documents specified in 209 CMR 33.18 with the commissioner. The application shall be deemed to be filed on the date on which it is determined by the commissioner to be complete. The commissioner may seek other appropriate supervisory solutions to the bank's financial condition pending the filing of a complete application.
- (2) Action by the Commissioner. If, upon approval of the completed application and the determination that the requirements of 209 CMR 33.16 are met, the commissioner in his discretion determines to authorize the supervisory stock conversion of the bank, he shall approve the application for conversion, the plan of conversion, including the identity of the proposed purchaser(s), the purchase price, the closing date for the purchase, the other terms of sale and the amended and restated articles of organization and/or charter. After having given the approvals set forth in the preceding sentence, the commissioner shall endorse his approval on the amended and restated articles of organization and/or charter.
- (3) Conditions of Approval. The commissioner's approval of an application for a supervisory stock conversion will be conditioned on (i) completion of the sale of conversion stock within a maximum of three months after the commissioner approves the application and (ii) satisfaction of any other requirement or condition the commissioner may impose.

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33.19: continued

(4) Filing With the Secretary of the Commonwealth. After the commissioner has taken the action specified in 209 CMR 33.19(2), the bank may file the amended and restated articles of organization and/or charter, endorsed with the approval of the commissioner, with the Secretary of the Commonwealth. If such filing is not made by the bank within 30 days after the date of the commissioner's endorsement, the application for conversion shall become null and void. Upon the filing of such amended and restated articles of organization and/or charter and acceptance of the same by the Secretary of the Commonwealth, the bank shall become a stock form bank.

(5) Amendment of Plan of Conversion. After approval by the commissioner, the plan of conversion may not be amended without the written approval of the commissioner in each case.

33.20: Applicable Regulations of 209 CMR 33.01 through 33.12.

Terms used in 209 CMR 33.13 through 33.20 which are defined in 209 CMR 33.02 shall have the definitions set forth therein. The provisions of 209 CMR 33.10 through 33.12 shall be applicable to conversions under 209 CMR 33.13 through 33.20.

33.21: Scope of Subpart C

209 CMR 33.21 through 33.32 establishes procedures, requirements and options for the reorganization of mutual banking institutions into mutual holding companies and the issuance of securities by a subsidiary banking institution or subsidiary holding company of a mutual holding company under the provisions of M.G.L. c. 167H.

The purpose of 209 CMR 33.21 through 33.32 is to protect and preserve the interests and rights of depositors of a reorganizing mutual banking institution or a subsidiary banking institution of a mutual holding company or a subsidiary holding company. In the event of a conflict between the stock issuance provisions of 209 CMR 33.21 through 33.32 and the standard stock conversion provisions of 209 CMR 33.01 through 33.12, the latter provisions shall control unless the Commissioner determines that depositor interests or the context otherwise requires.

Nothing contained in 209 CMR 33.21 through 33.32 shall limit the ability of the Commissioner to consider other information in determining whether or not to approve an application to reorganize or to issue such securities.

33.22: Definitions

Terms used in 209 CMR 33.21 through 33.30 which are defined in 209 CMR 33.02 shall have the definitions set forth therein. All other terms used in 209 CMR 33.22 shall be defined as follows, unless the context otherwise requires:-

Acquiree subsidiary banking institution any mutual banking institution, other than a resulting subsidiary banking institution, that:

- (a) is acquired by a mutual holding company, as part of, and concurrently with, a mutual holding company reorganization; and
- (b) is in the mutual form immediately prior to such acquisition.

The term shall also include any mutual banking institution that is acquired by a mutual holding company subsequent to its reorganization and any resulting subsidiary banking institution or acquire subsidiary banking institution of another mutual holding company acquired through a merger under M.G.L. c. 167H, § 7(3) for the purpose of (a) determining membership rights under 209 CMR 33.25; (b) stock issuances under 209 CMR 33.27 through 33.29; and (c) mutual holding company conversions to stock form under 209 CMR 33.32 through 33.41.

Independent Corporator a corporator of a reorganizing mutual savings bank who is not an employee, officer, trustee or significant borrower of such savings bank. Upon the request of an applicant mutual savings bank, the commissioner may designate personal financial information relating to credit extensions to corporators as confidential pursuant to 209 CMR 33.04(4).

Insider an officer, director, trustee or corporator of a mutual holding company or a subsidiary banking institution(s).

33.22: continued

Member any depositor of a mutual banking institution which is a savings bank or a cooperative bank, and any depositor of a subsidiary banking institution of a mutual holding company.

Mutual banking institution a Massachusetts savings or co-operative bank operating in mutual form.

Mutual holding company a mutual banking institution reorganized in accordance with M.G.L. c. 167H to hold all or part of the shares of capital stock of a subsidiary banking institution, and shall mean, unless otherwise indicated, a subsidiary holding company controlled by a mutual holding company, organized under 209 CMR 33.21 through 33.32.

Reorganization Plan a plan to reorganize into a mutual holding company pursuant to M.G.L. c. 167H.

Resulting subsidiary banking institution a subsidiary banking institution that is organized as a subsidiary of a reorganizing mutual banking institution to receive the substantial part of the assets and liabilities (including all deposit accounts) of the reorganizing mutual banking institution upon consummation of the reorganization.

Securities:

- (a) stock of any kind including without limitation preferred or common stock;
- (b) securities convertible into or exchangeable for stock of any kind; and
- (c) warrants, options or other rights for the issuance of stock of any kind or of securities convertible into or exchangeable for stock of any kind.

Stock Issuance Plan a plan providing for the issuance of securities by: (a) a subsidiary banking institution subject to the requirements of 209 CMR 33.21 through 33.32; or (b) a subsidiary holding company subject to the requirements of 209 CMR 33.21 through 33.32.

Subsidiary banking institution the banking institution resulting from the reorganization of a mutual banking institution in accordance with section three of M.G.L. c. 167H, all or part of the capital stock of which is held by a mutual holding company or a subsidiary holding company.

Subsidiary holding company a stock holding company, organized as a business corporation under the laws of Massachusetts or another state, which is controlled by a mutual holding company, which owns the stock of a subsidiary banking institution whose depositors have membership rights in the parent mutual holding company and whose permissible activities and powers are governed by M.G.L. c. 167H and 209 CMR 33.21 through 33.32.

Tax-Qualified Employee Stock Benefit Plan and "ESOP" any defined benefit plan or defined contribution plan, such as an employee stock ownership plan, stock bonus plan, profit sharing plan or other plan, which meets the requirements to be qualified under § 401 of the Internal Revenue Code.

A "nontax-qualified employee benefit plan" is defined as any defined benefit plan or defined contribution plan which is not so qualified.

33.23: Mutual Holding Company Reorganizations

A mutual banking institution may reorganize to become a mutual holding company, or join in a mutual holding company reorganization as an acquiree subsidiary banking institution, only upon satisfaction of the following conditions:

- (1) A Reorganization Plan is approved by a majority of the board of trustees or directors of the reorganizing mutual banking institution and any acquiree subsidiary banking institution;
- (2) A Reorganization Plan and Application is filed with the Commissioner and the Commissioner has given written approval of the proposed reorganization;
- (3) The Reorganization Plan is submitted to the incorporators of the reorganizing subsidiary banking institution and any acquiree subsidiary banking institution which are savings banks and

33.23: continued

members of the reorganizing subsidiary banking institution and any acquiree subsidiary banking institution which are co-operative banks pursuant to an offering circular or prospectus which substantially conforms to 209 CMR 33.04(1) as determined by and approved in advance by the Commissioner. Such reorganization plan shall also be subject to the following approvals:

- (a) In the case of a reorganizing mutual savings bank, such Reorganization Plan shall be approved by a majority of the total votes of the corporators and a majority of independent corporators who shall constitute not less than 60% of all corporators, eligible to be cast at the annual meeting or at a special meeting called, in accordance with the mutual banking institution's bylaws; or
 - (b) In the case of a reorganizing mutual co-operative bank, such Reorganization Plan shall be approved by a majority of its members present and voting in each case at the annual meeting or at a special meeting called, in accordance with the mutual banking institution's bylaws;
- (4) The reorganizing mutual institution shall file an application for approval of the Reorganization Plan in the form required by the Commissioner. Such Application shall contain:
- (a) a copy of detailed minutes of the board of trustees or directors meeting authorizing the Reorganization Plan and approving the Reorganization Plan with the clerk's attestation;
 - (b) a copy of detailed minutes of the annual or special meeting of the corporators or members approving the Reorganization Plan with the clerk's attestation;
 - (c) all other application information and materials required to be submitted under 209 CMR 33.04(1);
 - (d) The application and information statement required by 209 CMR 33.23(4)(c) shall contain a full and fair disclosure of the written commitments required under 209 CMR 33.30(7).
 - (e) any other information which the Commissioner may require; and
- (5) All necessary regulatory approvals have been obtained and all conditions specified in 209 CMR 33.21 through 33.32 or otherwise imposed by the Commissioner in connection with the granting of the approvals specified in 209 CMR 33.23(5) have been satisfied.

33.24: Review Standards for Reorganizations

- (1) Grounds for Approval of Reorganizations. The Commissioner may approve a proposed mutual holding company reorganization pursuant to 209 CMR 33.21 through 33.30 if:
- (a) the formation of the mutual holding company will be fair and not prejudicial to the depositors of the mutual banking institution seeking to reorganize;
 - (b) the public interest will be served by the formation of the proposed mutual holding company;
 - (c) approval will not result in unsafe or unsound banking practices;
 - (d) the financial and management resources of the mutual banking institution seeking to convert are satisfactory; and
 - (e) the competence, character, and banking experience of the reorganizing mutual banking institution, including its record of compliance with applicable laws and regulations, are satisfactory.
- (2) Grounds for Disapproval of Reorganizations. The Commissioner may disapprove a proposed mutual holding company reorganization pursuant to 209 CMR 33.21 through 33.30 if:
- (a) disapproval is necessary to prevent unsafe or unsound practices;
 - (b) the financial or managerial resources of the reorganizing mutual banking institution or any acquiree subsidiary banking institution warrant disapproval;
 - (c) the proposed capitalization of the mutual holding company fails to meet the requirements of 209 CMR 33.24(3);
 - (d) a stock issuance is proposed in connection with the reorganization pursuant to 209 CMR 33.27 that fails to meet the standards established by 209 CMR 33.27;
 - (e) the reorganizing mutual banking institution or any acquiree subsidiary banking institution fails to furnish the information required to be included in the Reorganization Plan or Application or any other information requested by the Commissioner in connection with the proposed reorganization;
- or

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(f) the proposed reorganization would violate any provision of law, including (without limitation) 209 CMR 33.23 (regarding board of trustees or directors' approval and corporator or membership approval) or 209 CMR 33.25(1) (regarding continuity of membership rights).

(3) Capitalization.

(a) The Commissioner shall disapprove a proposal by a reorganizing mutual banking institution or any acquiree association to capitalize a mutual holding company in an amount in excess of a nominal amount if immediately following the reorganization, the resulting subsidiary banking institution or the acquiree subsidiary banking institution would fail to be "adequately capitalized" as defined under 12 CFR Part 325.

(b) Proposals by reorganizing mutual banking institutions and acquiree subsidiary banking institutions to capitalize mutual holding companies shall also comply with any applicable statutes, and with regulations or policies of the Commissioner governing capital distributions by subsidiary banking institutions in effect at the time of the reorganization. (Approval of a Reorganization Plan by the Commissioner under 209 CMR 33.21 through 33.30 shall also be deemed to constitute Commissioner approval under any regulation or policy of the Commissioner governing capital distributions by subsidiary banking institutions, subject to any conditions imposed by the Commissioner.)

(4) Presumptive Disqualifiers.

(a) Managerial resources The factors specified in 12 CFR §574.7(g)(1)(i) through (g)(1)(vi) shall give rise to a rebuttable presumption that the managerial resources test of 209 CMR 33.24(1)(d) is not met. For this purpose, each place the term "acquiror" appears in 12 CFR § 574.7(g)(1)(i) through (g)(1)(vi), it shall be read to mean the reorganizing mutual banking institution or any acquiree subsidiary banking institution, and the reference in 12 CFR § 574.7(g)(1)(v) to filings shall be deemed to include filings under either applicable Massachusetts law or 209 CMR 33.00. References to the terms "Office of Thrift Supervision" or "Office" in 12 CFR § 574.7(g)(1)(i) through (g)(1)(vi) shall be read to mean the Commissioner or Board of Bank Incorporation if the context requires.

(b) Safety and soundness and financial resources Failure by a reorganizing mutual banking institution and any acquiree subsidiary banking institution to submit a business plan in connection with a Reorganization Plan, or submission of a business plan that projects activities that are inconsistent with community credit needs and the public interest, or that fails to demonstrate that the capital of the mutual holding company will be deployed in a safe and sound manner, shall give rise to a rebuttable presumption that the safety and soundness and financial resources tests of 209 CMR 33.24(2)(a) and (2)(b) are not met.

33.25: Membership Rights

(1) Depositors of Resulting Subsidiary Banking Institutions, Acquiree Subsidiary Banking Institutions and Banks In Mutual Form When Acquired. The Articles of Organization or bylaws of a mutual holding company shall:

(a) confer upon existing and future depositors of the resulting subsidiary banking institution the same membership rights in the mutual holding company, including liquidation rights in the mutual holding company under M.G.L. c. 167H, § 2, as were conferred upon depositors of the reorganizing mutual banking institution as in effect immediately prior to the reorganization;

(b) confer upon existing and future depositors of any acquiree subsidiary banking institution or any bank that is in the mutual form when acquired by the mutual holding company the same membership rights, including liquidation rights under M.G.L. c. 167H § 2, in the mutual holding company as were conferred upon depositors of the acquired subsidiary banking institution immediately prior to acquisition; provided that if the acquired subsidiary banking institution is merged into another subsidiary banking institution from which the mutual holding company draws members, the depositors of the acquired subsidiary banking institution shall receive the same membership rights as the depositors of the subsidiary banking institution into which the acquired subsidiary banking institution is merged.

(c) provide that any Stock Issuance Plan under 209 CMR 33.27, which is not included as part of a Reorganization Plan, shall require the approval of the corporators of the mutual holding company or members of the subsidiary banking institution or acquiree subsidiary banking institution, subject to the following requirements:

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1. In the case of a subsidiary banking institution which is a savings bank, such Stock Issuance Plan shall be approved by a majority of the total votes of its mutual holding company's corporators and a majority of independent corporators who shall constitute not less than 60% of all corporators, eligible to be cast at the annual meeting or at a special meeting called, in accordance with the mutual banking institution's bylaws; or
2. In the case of a subsidiary banking institution which is a co-operative bank, such Stock Issuance Plan shall be approved by a majority of its members, present and voting in each case at the annual meeting or at a special meeting called, in accordance with the mutual banking institution's bylaws.

(2) Depositors of Banks in Stock Form When Acquired. A mutual holding company that acquires a bank in stock form, other than a resulting subsidiary banking institution or an acquiree subsidiary banking institution, shall not confer any membership rights upon the depositors of such stock bank, unless such association is merged into a subsidiary banking institution from which the mutual holding company draws members, in which case the depositors of the stock bank shall receive the same membership rights as other depositors of the subsidiary banking institution into which the stock bank is merged.

33.26: Contents of Reorganization Plans

Each Reorganization Plan shall contain a complete description of all significant terms of the proposed reorganization, shall attach and incorporate any Stock Issuance Plan proposed in connection with the Reorganization Plan, and shall:

- (1) provide for amendment of the Articles of Organization and bylaws of the reorganizing mutual banking institution to read in the form of the Articles of Organization and bylaws of a mutual holding company, and attach and incorporate such Articles of Organization and bylaws;
- (2) provide for the organization of the resulting subsidiary banking institution, which shall be in the form of a savings bank or co-operative bank in stock form organized pursuant to M.G.L. c. 167H, § 5, and shall attach and incorporate the proposed Articles of Organization and bylaws of such subsidiary banking institution;
- (3) If the reorganizing mutual banking institution proposes to form a subsidiary holding company, provide for the organization of a subsidiary holding company and attach and incorporate the proposed Articles of Organization or Corporate Charter and bylaws of such subsidiary holding company. Such Articles or Charter and bylaws, and any amendments thereto, shall conform to M.G.L. c. 167H and 209 CMR 33.21 through 33.32, including applicable limitations on powers and investments and shall require the Commissioner's prior written approval.
- (4) provide for amendment of the Articles of Organization and bylaws of any acquiree subsidiary banking institution to read in the form of the Articles of Organization and bylaws of a state-chartered bank or federal savings association in stock form, and attach and incorporate such Articles of Organization and bylaws;
- (5) provide that, upon consummation of the reorganization, the substantial part of its assets and liabilities, including all of its deposit liabilities, of the reorganizing mutual banking institution shall be transferred to the resulting subsidiary banking institution, which shall thereupon become an operating subsidiary of the mutual holding company;
- (6) provide that all assets, rights, obligations, and liabilities of whatever nature of the reorganizing mutual banking institution that are not expressly retained by the mutual holding company shall be deemed transferred to the resulting subsidiary banking institution;
- (7) provide that each depositor in the reorganizing mutual banking institution or any acquiree subsidiary banking institution immediately prior to the reorganization shall upon consummation of the reorganization receive, without payment, an identical account in the resulting subsidiary banking institution or the acquiree subsidiary banking institution, as the case may be;

33.26: continued

- (8) provide that the Reorganization Plan as adopted by the boards of trustees or directors of the reorganizing mutual banking institutions and any acquiree subsidiary banking institution may be substantively amended by those boards of trustees or directors as a result of comments from regulatory authorities or otherwise prior to the approval from the corporators of a reorganizing mutual savings bank or members of the reorganizing mutual co-operative bank and any acquiree subsidiary banking institution of the Reorganization Plan and at any time thereafter with the concurrence of the Commissioner; and that the reorganization may be terminated by the board of trustees or directors of the reorganizing mutual banking institution or any acquiree subsidiary banking institution at any time prior to the meeting of the corporators or members of the mutual banking institution called to consider the Reorganization Plan and at any time thereafter with the concurrence of the Commissioner;
- (9) provide that the Reorganization Plan shall be terminated if not completed within a specified period of time, which shall not be more than 24 months from the date upon which the corporators or members of the reorganizing mutual banking institution or the date upon which the corporators or members of any acquiree subsidiary mutual institution, whichever is earlier, approve the Reorganization Plan and may not be extended by the reorganizing mutual banking institution or acquiree subsidiary banking institution;
- (10) provide that the mutual holding company shall liquidate under M.G.L. c.167H, § 2, upon the sale or acquisition of its sole subsidiary banking institution to a bank holding company which is not a mutual holding company or to a banking institution which is not a subsidiary banking institution of a mutual holding company; and
- (11) provide that the expenses incurred in connection with the reorganization shall be reasonable.

33.27: Issuance of Stock by Subsidiaries of Mutual Holding Companies

- (1) Approval Requirements. No subsidiary banking institution of a mutual holding company (including any resulting subsidiary banking institution or acquiree subsidiary banking institution) may issue stock to persons other than its mutual holding company parent in connection with a mutual holding company reorganization, or at any time subsequent to the subsidiary banking institution's acquisition by the mutual holding company, unless the subsidiary banking institution obtains approval of each such issuance from the Commissioner. Any reference in 209 CMR 32.27 to a subsidiary banking institution shall include a subsidiary holding company in the event of a stock issuance by a subsidiary holding company. The Commissioner shall approve any proposed issuance that meets each of the criteria set forth below in 209 CMR 33.27(1)(a) to (i).
 - (a) The proposed issuance is to be made pursuant to a Stock Issuance Plan that contains all the provisions required by 209 CMR 33.28.
 - (b) The Stock Issuance Plan is consistent with the terms of the subsidiary banking institution's Articles of Organization (or any proposed amendments thereto), including terms governing the type and amount of stock that may be issued.
 - (c) The Stock Issuance Plan would provide the subsidiary banking institution, its mutual holding company parent, and any other subsidiaries of the mutual holding company with fully sufficient capital and would not be inequitable or detrimental to the subsidiary banking institution or to members of the mutual holding company parent.
 - (d) The proposed price or price range of the stock to be issued is reasonable. The Commissioner shall review the reasonableness of the proposed price or price range in accordance with 209 CMR 33.27(2).

33.27: continued

(e) The aggregate amount of outstanding common stock of the subsidiary banking institution owned or controlled by persons other than the subsidiary banking institution's mutual holding company parent at the close of the proposed issuance shall be less than 50% of the subsidiary banking institution's total outstanding common stock, unless the subsidiary banking institution was a stock subsidiary banking institution when acquired by the mutual holding company and is not a resulting subsidiary banking institution or any acquiree subsidiary banking institution, in which case the foregoing restriction shall not apply. Any amount of preferred stock may be issued by any subsidiary banking institution of a mutual holding company to persons other than the subsidiary banking institution's mutual holding company, consistent with any other applicable laws and regulations.

(f) The subsidiary banking institution shall submit a business plan which details how the capital raised from the proposed issuance of securities will be deployed, expected earnings resulting from the issuance of stock, and such other information as may be required by the Commissioner. Such business plan shall be in a form acceptable to the Commissioner.

(g) The subsidiary banking institution shall furnish any information required by the Commissioner in connection with the proposed issuance.

(h) Corporators or members have approved the Stock Issuance Plan under 209 CMR 33.25(1)(c).

(i) The proposed issuance complies with all other applicable laws and regulations.

(2) Pricing and Sale of Securities Offered to the General Public.

(a) All of the provisions of 209 CMR 33.08 shall apply to a stock issuance that includes an offer to the general public applied for pursuant to 209 CMR 33.21 through 33.32, unless otherwise provided for in 209 CMR 33.21 through 33.32 or otherwise deemed inapplicable by the Commissioner. For purposes of 209 CMR 33.27(2)(a), the term "conversion" as it appears in the provisions of 209 CMR 33.08 shall be deemed to refer to the stock issuance, and the term "converted or converting bank" shall be deemed to refer to the subsidiary banking institution undertaking the stock issuance.

(b) To the extent the pricing materials submitted pursuant to 209 CMR 33.27(2)(a) include any discount due to the minority status of the stock to be offered, the materials must indicate the amount of the discount and how that amount was determined.

(c) No appraiser shall serve as an underwriter or selling agent under the same plan of conversion or in conjunction with the same issuance. No affiliate of an appraiser may act as an underwriter or selling agent unless procedures are followed and representations made to ensure that an appraiser is separate from the underwriter or selling agent affiliate and the underwriter or selling agent affiliate does not make recommendations or in any way impact the appraisal. No appraiser shall receive any other fee except for the fee for services rendered in connection with such appraisal.

(3) Offering Restrictions.

(a) No representations may be made in any manner in connection with the offer or sale of any stock issued pursuant to 209 CMR 33.21 through 33.32 that the price, price range or any other pricing information related to such stock issuance has been approved by the Commissioner or that the stock has been approved or disapproved by the Commissioner or that the Commissioner has endorsed the accuracy or adequacy of any securities offering documents disseminated in connection with such stock issuance.

(b) All stock issuances pursuant to 209 CMR 33.21 through 33.32, which include an offering to the general public, must provide that the offering be structured in a manner similar to a standard conversion under 209 CMR 33.01 to 33.12, inclusive, including the stock purchase priorities accorded depositors of the issuing subsidiary banking institution's mutual holding company, unless the subsidiary banking institution demonstrates to the satisfaction of the Commissioner that a nonconforming issuance would be more beneficial to the subsidiary banking institution compared to a conforming offering, considering, in the aggregate, the effect of each on the subsidiary banking institution's financial and managerial resources and future prospects, the effect of the issuance upon the subsidiary banking institution, the insurance risk to the relevant federal deposit insurance fund and the converting bank's excess deposit insurer, and the convenience and needs of the community to be served.

33.27: continued

(c) In the offer, sale, or purchase of stock issued pursuant to 209 CMR 33.21 through 33.32, no person shall:

1. employ any device, scheme, or artifice to defraud;
2. make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
3. engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser or seller.

(4) Procedural and Substantive Requirements.

(a) The procedural and substantive requirements of 209 CMR 33.01 through 209 CMR 33.12, inclusive, shall apply to all mutual holding company stock issuances under 209 CMR 33.21 through 33.32, unless inapplicable or inappropriate, as determined by the Commissioner.

(b) Any limitations imposed directly or indirectly by 209 CMR 33.21 through 33.32 on the amount or percentage of securities that may be held by any person shall be cumulative.

(c) The liquidation account provisions of 209 CMR 33.05(12) shall apply to any stock issuance under 209 CMR 33.21 through 33.32. Such liquidation account shall be limited to an amount equal to the value of the net worth of the subsidiary banking institution represented by each stock issuance. Members also shall retain full liquidation rights in the mutual holding company upon its liquidation pursuant to M.G.L. c. 167H, § 2.

33.28: Contents of Stock Issuance Plans

(1) Mandatory provisions. Each of the provisions mandatory for all stock issuance plans under 209 CMR 33.28 shall be deemed regulatory requirements. Any reference to a subsidiary banking institution shall include a subsidiary holding company in the event of a stock issuance by a subsidiary holding company. Each Stock Issuance Plan shall contain a complete description of all significant terms of the proposed stock issuance (including the information specified in 209 CMR 33.28(2) to the extent known); shall attach and incorporate the proposed stock order form and any agreements or other documents defining the rights of the stockholders; and shall:

(a) provide that the stock shall be sold at a total price equal to the estimated pro forma market value of such stock, based upon an independent valuation as provided in 209 CMR 33.08;

(b) provide that the aggregate amount of outstanding common stock of the subsidiary banking institution owned or controlled by persons other than the subsidiary banking institution's mutual holding company parent at the close of the proposed issuance shall be less than 50% of the subsidiary banking institution's total outstanding common stock. This provision may be omitted if the proposed issuance will be conducted by a subsidiary banking institution that was in the stock form when acquired by its mutual holding company parent, provided the subsidiary banking institution is not a resulting subsidiary banking institution or an acquiree subsidiary banking institution;

(c) provide that the aggregate amount of common stock acquired in the proposed issuance, plus all prior issuances of the subsidiary banking institution, by any nontax-qualified employee stock benefit plan of the subsidiary banking institution or any insider and his or her associates, exclusive of any stock acquired by said plan or insider and his or her associates in the secondary market, shall not exceed ten percent of the outstanding shares of common stock of the subsidiary banking institution held by persons other than the subsidiary banking institution's mutual holding company parent at the close of the proposed issuance. In calculating the number of shares held by any insider or associate under this provision or the provision in 209 CMR 33.28(1)(d), shares held by any tax-qualified or nontax-qualified employee stock benefit plan of the subsidiary banking institution that are attributable to such person shall not be counted;

(d) provide that the aggregate amount of stock, whether common or preferred, acquired in the proposed issuance, plus all prior issuances of the subsidiary banking institution, by nontax-qualified employee stock benefit plan of the subsidiary banking institution and his or her associates, exclusive of any stock acquired by said plan or insider and his or her associates in the secondary market, shall not exceed 10% of the stockholders' equity of the subsidiary banking institution held by persons other than the subsidiary banking institution's mutual holding company parent at the close of the proposed issuance;

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(e) provide that the aggregate amount of common stock acquired in the proposed issuance, plus all prior issuances of the subsidiary banking institution, by any one or more tax-qualified employee stock benefit plans of the subsidiary banking institution, exclusive of any stock acquired by such plans in the secondary market, shall not exceed 10% of the outstanding shares of common stock of the subsidiary banking institution held by persons other than the subsidiary banking institution's mutual holding company parent at the close of the proposed issuance;

(f) provide that the aggregate amount of stock, whether common or preferred, acquired in the proposed issuance, plus all prior issuances of the subsidiary banking institution, by any one or more tax-qualified employee stock benefit plans of the subsidiary banking institution, exclusive of any stock acquired by such plans in the secondary market, shall not exceed 10% of the stockholders' equity of the subsidiary banking institution held by persons other than the subsidiary banking institution's mutual holding company parent at the close of the proposed issuance;

(g) provide that the aggregate amount of common stock acquired in the proposed issuance, plus all prior issuances of the subsidiary banking institution, by all nontax-qualified employee stock benefit plans of the subsidiary banking institution, insiders of the subsidiary banking institution, and associates of insiders, exclusive of any stock acquired by said plans, insiders, and associates in the secondary market, shall not exceed 35% of the outstanding shares of common stock of the subsidiary banking institution held by persons other than the subsidiary banking institution's mutual holding company parent at the close of the proposed issuance if the subsidiary banking institution has less than \$50 million in total assets prior to the issuance, or 25% of such outstanding shares if the subsidiary banking institution has more than \$500 million in total assets prior to the issuance.

If the subsidiary banking institution has between \$50 million and \$500 million in total assets prior to the issuance, the maximum percentage shall be equal to 35% minus 1% multiplied by the quotient of total assets less \$50 million divided by \$45 million. In calculating the number of shares held by insiders and their associates under this provision or the provision in 209 CMR 33.28(1)(h), shares held by any tax-qualified or nontax-qualified employee stock benefit plan of the subsidiary banking institution that are attributable to such persons shall not be counted;

(h) provide that the aggregate amount of stock, whether common or preferred, acquired in the proposed issuance, plus all prior issuances of the subsidiary banking institution, by all nontax-qualified employee stock benefit plans of the subsidiary banking institution, insiders and associates of insiders, exclusive of any stock acquired by said plans, insiders and associates in the secondary market, shall not exceed 35% of the stockholders' equity of the subsidiary banking institution held by persons other than the subsidiary banking institution's mutual holding company parent at the close of the proposed issuance if the subsidiary banking institution has less than \$50 million in total assets prior to the issuance or 25% of such stockholders' equity if the subsidiary banking institution has more than \$500 million in total assets prior to the issuance. If the subsidiary banking institution has between \$50 million and \$500 million in total assets prior to the proposed issuance, the maximum percentage shall be equal to 35% minus 1% multiplied by the quotient of total assets less \$50 million divided by \$45 million;

(i) provide that the sales price of the shares of stock to be sold in the issuance shall be a uniform price determined in accordance with 209 CMR 33.27;

(j) provide that, if at the close of the stock issuance the subsidiary banking institution has more than three hundred shareholders of any class of stock, the subsidiary banking institution shall promptly register that class of stock pursuant to the Securities Exchange Act of 1934, as amended (15 U.S.C. 78a-78jj), and undertake not to deregister such stock for a period of three years thereafter;

(k) provide that, if at the close of the stock issuance the subsidiary banking institution has more than 300 shareholders of any class of stock, the subsidiary banking institution shall use its best efforts to:

1. encourage and assist a market maker to establish and maintain a market for that class of stock; and
2. list that class of stock on a national or regional securities exchange or on the NASDAQ quotation system.

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(l) provide that, for a period of three years following the proposed issuance, no insider or his or her associates shall purchase, without the prior written approval of the Commissioner, any stock of the subsidiary banking institution except from a broker dealer registered with the Securities and Exchange Commission, except the foregoing restriction shall not apply to:

1. negotiated transactions involving more than 1% of the outstanding stock in the class of stock; or
2. purchases of stock made by and held by any tax-qualified or nontax-qualified employee stock benefit plan of the subsidiary banking institution even if such stock is attributable to insiders or their associates.

(m) provide that stock purchased by insiders and their associates in the proposed issuance shall not be sold for a period of at least one year following the date of purchase, except in the case of death or substantial disability, as determined by the Commissioner, of the insider or associate;

(n) provide that, in connection with stock subject to restriction on sale for a period of time:

1. Each certificate for such stock shall bear a legend giving appropriate notice of such restriction.
2. Appropriate instructions shall be issued to the subsidiary banking institution's transfer agent with respect to applicable restrictions on transfer of such stock.
3. Any shares issued as a stock dividend, stock split, or otherwise with respect to any such restricted stock shall be subject to the same restrictions as apply to the restricted stock.

(o) provide that the subsidiary banking institution will not offer or sell any of the stock proposed to be issued to any person whose purchase would be financed by funds loaned, directly or indirectly, to the person by the subsidiary banking institution;

(p) provide that, if necessary, the subsidiary banking institution's Articles of Organization will be amended to authorize issuance of the stock and attach and incorporate by reference the text of any such amendment;

(q) provide that the expenses incurred in connection with the issuance shall be reasonable;

(r) provide that the Stock Issuance Plan, if provided as part of a Reorganization Plan, may be amended or terminated in the same manner as the Reorganization Plan. Otherwise, the Stock Issuance Plan shall provide that it may be substantively amended by the board of trustees or directors of the mutual banking institution or the issuing subsidiary banking institution as a result of comments from regulatory authorities or otherwise prior to approval of the Stock Issuance Plan by the Commissioner, and at any time thereafter with the concurrence of the Commissioner; and that the Stock Issuance Plan may be terminated by the board of trustees or directors at any time prior to approval of the Plan by the Commissioner, and at any time thereafter with the concurrence of the Commissioner;

(s) provide that the subsidiary banking institution may make scheduled discretionary contributions to a tax-qualified employee stock benefit plan provided such contributions do not cause the subsidiary banking institution to fail to meet any of its regulatory capital requirements; and

(t) provide that in any Stock Issuance Plan that includes an offer to the general public, eligible account holders with subscription rights have first priority to purchase stock, supplemental eligible account holders have second priority and tax-qualified employee stock benefit plans have third priority. If the final stock valuation range exceeds the maximum stock offering range, up to 10% of the total offering of shares may be sold to the tax-qualified employee stock benefit plans.

Furthermore, if the ESOP is not able to purchase stock in the proposed issuance, the ESOP or any other tax-qualified plan may purchase shares in the open market or utilize authorized but unissued shares only with prior Commissioner approval; and disclosure must be made in the Stock Issuance Plan offering materials of the potential open market purchases or use of authorized but unissued shares to fund the ESOP and its effect on the subsidiary banking institution and its shareholders.

(u) No subsidiary banking institution shall, for a one-year period from the date of the initial stock issuance which includes an offer to the general public, implement a stock option plan or management or employee stock benefit plan, other than a tax-qualified plan, unless each of the following requirements is met:

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1. Each of the plans was fully disclosed in the proxy solicitation and offering materials.
 2. For stock option plans, the total number of shares of common stock for which options may be granted will not exceed, at the close of each proposed issuance, 10% of the amount of shares issued in the proposed issuance.
 3. For management or employee stock benefit plans, the aggregate amount of such plans will not exceed, at the close of each proposed issuance, 3% of the amount of shares issued in the proposed issuance.
 4. The aggregate amount of all shares obtained by a tax-qualified employee stock benefit plan(s) or ESOP(s) under 209 CMR 33.21 through 33.32, and all the shares in a management or employee stock benefit plan, pursuant to 209 CMR 33.28(1)(u)3., shall not exceed, at the close of each proposed issuance, 10% of the total amount of shares issued in the proposed issuance.
 5. Subsidiary banking institutions that have in excess of 10% tangible capital following the initial stock issuance which includes an issuance to the general public, may be granted, on a case by case basis, approval to establish a management or employee stock benefit plan pursuant to 209 CMR 33.28(1)(u)3. in an amount up to four percent of the amount of the shares issued to persons other than the mutual holding company, and an aggregate total of up to 12% for all plans established pursuant to 209 CMR 33.28(1)(u)4..
 6. All such plans, prior to establishment and implementation, are approved by the holders of 2/3 of the total votes eligible to be cast at any duly called meeting of shareholders of the subsidiary banking institution or its parent mutual holding company, either annual or special, to be held not earlier than six months after completion of the initial stock issuance which includes an offer to the general public.
 7. In the case of a subsidiary banking institution of a mutual holding company, all such plans, prior to establishment and implementation, are approved by the holders (other than its parent mutual holding company) of a majority of the total votes eligible to be cast, at any duly called meeting of shareholders, either annual or special, to be held no earlier than six months after completion of the initial stock issuance which includes an offer to the general public.
 8. For stock option plans, stock options are granted at no less than the market price at which the stock is trading at the time of grant.
 9. For management or employee stock benefit plans, no stock from an issuance which includes an offer to the general public is used to fund the plans.
 10. The plans subject to 209 CMR 33.21 through 33.32 must comply with the terms and amounts specified in 209 CMR 33.28(1)(u)4..
 11. The plans subject to 209 CMR 33.21 through 33.32 shall begin vesting no earlier than one year from the date the plans are approved by shareholders, shall not vest at a rate in excess of 20% a year, and shall not provide for accelerated vesting except in the case of substantial disability or death or upon written approval of the Commissioner.
 12. Disclosure in all proxy and related material distributed to shareholders in connection with the meeting at which the stock option plans and management stock benefit plans will be voted shall state that the plans comply with regulations of the Commissioner, that the Commissioner in no way endorses or approves the plans, and no written or oral representation to the contrary shall be made.
 13. No later than five calendar days from the date of shareholder approval of any stock option or management benefit plans, the institution shall file with the Commissioner a copy of the approved plans and written certification that the plans approved by the shareholders are the same plans filed with and disclosed in the proxy materials.
 14. The Commissioner, in his or her discretion, may require the submission of a written independent opinion by a professional third party management compensation expert on the fairness and reasonableness of any such management stock purchase plan or management stock option plan.
- (v) provide that any waiver by a mutual holding company of a dividend payment from its subsidiary banking institution shall require the prior approval of the Commissioner; and
- (w) provide that the proceeds of any Stock Issuance Plan, which entails an offer to the general public, shall be payable in cash to the subsidiary banking institution.

33.28: continued

- (2) Optional provisions. A Stock Issuance Plan may:
- (a) provide that, in the event the proposed stock issuance is part of a Reorganization Plan, the stock offering may be commenced concurrently with or at any time after the mailing to the corporators of the reorganizing subsidiary banking institution and any acquiree subsidiary banking institutions which are savings banks and members of the reorganizing subsidiary banking institution and any acquiree subsidiary banking institutions which are co-operative banks of any proxy statement(s) authorized for use by the Commissioner. The offering may be closed before the required corporator or membership vote(s), provided the offer and sale of the stock shall be conditioned upon the approval of the Reorganization Plan and Stock Issuance Plan by the members of the reorganizing subsidiary banking institution and any acquiree subsidiary banking institution;
 - (b) provide that any insignificant residue of stock of the subsidiary banking institution not sold in the offering may be sold in such other manner as provided in the Stock Issuance Plan, with the Commissioner's approval;
 - (c) provide that the subsidiary banking institution may issue and sell, in lieu of shares of its stock, units of securities consisting of stock and long-term warrants or other equity securities, in which event any reference in the provisions of 209 CMR 33.21 through 33.32 to stock shall apply to such units of equity securities unless the context otherwise requires; or
 - (d) provide that the subsidiary banking institution may reserve shares representing up to 10% of the proposed offering for issuance in connection with an employee stock benefit plan which conforms to applicable provisions of 209 CMR 33.28.

33.29: Issuance of Securities to Other than the General Public

- (1) A subsidiary banking institution may issue securities to other than the general public, as may be approved by the Commissioner. Such issuance of securities shall not be subject to the provisions of 209 CMR 33.27(2), (3)(b) and any other provision of 209 CMR 33.21 through 33.31 deemed inapplicable by the Commissioner. The Commissioner may provide for such classifications, differentiations, adjustments or distinctions for any class of transactions which the Commissioner deems necessary to carry out the provisions of 209 CMR 33.21 through 33.32. Subject to the Commissioner's approval, the following transactions are authorized:
- (a) An issuance of securities in connection with an employee stock option or other employee benefit plan which conforms to applicable provisions of 209 CMR 33.28;
 - (b) An issuance to the holders of convertible or other securities of the subsidiary banking institution;
 - (c) An issuance in connection with a merger, acquisition or reorganization as part of a corporate transaction to be approved by the Commissioner; and
 - (d) An issuance as part of a private placement of securities with accredited investors as that term is defined in the Securities Act of 1933 as amended, or rules and regulations issued thereunder.
- (2) In any transaction under 209 CMR 33.29(1), in which securities of the subsidiary banking institution are issued before an offering has been made to the eligible account holders and to the general public, the Commissioner may impose such conditions or requirements as he or she may determine in order to comply with the review standard found in 209 CMR 33.29(4). Such conditions or requirements may include, but are not limited to, the following:
- (a) The securities may be limited to preferred, nonvoting shares which are not convertible to voting shares.
 - (b) The securities may be required to constitute Tier 1 Capital under applicable regulations of federal bank regulatory agencies.
 - (c) The total aggregate amount of securities issued under 209 CMR 33.29(1) or sold under 209 CMR 33.29(3) may be limited to 25% or less of the outstanding voting securities of the subsidiary banking institution.
 - (d) The purchase of any such securities by directors, corporators, officers, employees or associates of a mutual holding company or its subsidiary banking institution may require the prior approval of the Commissioner; and
 - (e) The subsidiary banking institution may be required to demonstrate to the Commissioner's satisfaction why an issuance under 209 CMR 33.29 is more advantageous than a stock issuance which includes an offer to the general public.

33.29: continued

(3) A mutual holding company may directly sell securities of its subsidiary banking institution and receive the proceeds thereof, in any securities issuance approved under 209 CMR 33.29(1).

(4) In reviewing an application under 209 CMR 33.29, the Commissioner shall consider the effect on the subsidiary banking institution's financial and managerial resources and future prospects, the effect of the issuance upon the subsidiary banking institution, the insurance risk to the relevant federal deposit insurance fund and the converting bank's excess deposit insurer, the convenience and needs of the community to be served and whether such issuance would be inequitable or detrimental to the members of the mutual holding company or its subsidiary banking institution or would adversely effect such members' liquidation rights under M.G.L. c.167H, § 2.

33.30: Disposition of Stock and Operating Restrictions

(1) Activities Restrictions. A mutual holding company and its subsidiary holding company shall only engage in those activities authorized for a mutual holding company pursuant to M.G.L. c.167H and 209 CMR 33.21 through 33.32. A subsidiary holding company shall be subject to the Commissioner's supervision, regulation and examination to the same extent as a mutual holding company under M.G.L. c. 167H and M.G.L. c. 167A.

(2) Disposition of Stock. A mutual holding company shall provide written notice to the Commissioner at least 30 days prior to the effective date of any direct or indirect transfer of any of the stock it holds in a subsidiary holding company, a resulting subsidiary banking institution, an acquiree subsidiary banking institution, or any subsidiary banking institution that was in the mutual form when acquired by the mutual holding company, including stock transferred in connection with a pledge pursuant to 209 CMR 33.30(3) or any transfer of all or a substantial portion of the assets or liabilities of any such subsidiary holding company or subsidiary banking institution.

(3) Pledging stock.

(a) No mutual holding company may pledge the stock of its resulting subsidiary banking institution, an acquiree subsidiary banking institution, or any subsidiary banking institution that was in the mutual form when acquired by the mutual holding company (or its parent mutual holding company), unless the proceeds of the loan secured by the pledge are infused into the subsidiary banking institution whose stock is pledged. No mutual holding company may pledge the stock of its subsidiary holding company unless the proceeds of the loan secured by the pledge are infused into any banking institution subsidiary of the subsidiary holding company that is a resulting subsidiary banking institution, an acquiree subsidiary banking institution, or a subsidiary banking institution that was in the mutual form when acquired by the subsidiary holding company (or its parent mutual holding company). In the event the subsidiary holding company has more than one subsidiary banking institutions, the loan proceeds shall unless otherwise approved by the Commissioner, be infused in equal amounts to each subsidiary banking institution. Any amount of the stock of such subsidiary banking institution or subsidiary holding company may be pledged for these purposes. Nothing in 209 CMR 33.30(3)(a) shall be deemed to prohibit:

1. the payment of dividends from a subsidiary banking institution to its mutual holding company parent to the extent otherwise permissible; or
2. the payment of dividends from a subsidiary holding company to its mutual holding company parent to the extent otherwise permissible; or

(b) Within ten days after its pledge of stock pursuant to 209 CMR 33.30(3)(a), a mutual holding company shall provide written notice to the Commissioner regarding the terms of the transaction (including the amount of principal and interest, repayment terms, maturity date, the nature and amount of collateral, and the terms governing seizure of the collateral) and shall include in such notice a certification that the proceeds of the loan have been transferred to the subsidiary banking institution whose stock (or the stock of its parent subsidiary holding company) has been pledged.

(c) Any mutual holding company that fails to make any payment on a loan secured by the pledge of stock under 209 CMR 33.30(3)(a) on or before the date on which such payment is due shall, on the first day after such payment is due, provide written notice of nonpayment to the Commissioner.

33.30: continued

(4) Restrictions on stock repurchases. No subsidiary banking institution of a mutual holding company that has any stockholders other than the subsidiary banking institution's mutual holding company and no subsidiary holding company that has any stockholders other than its parent mutual holding company shall repurchase any share of stock within three years of its date of issuance, unless the repurchase:

- (a) is part of a general repurchase made on a pro rata basis pursuant to an offer approved by the Commissioner and made to all stockholders of the subsidiary banking institution or subsidiary holding company (except that the parent mutual holding company may be excluded from the repurchase with the Commissioner's approval);
- (b) is limited to the repurchase of qualifying shares of a director; or
- (c) is purchased in the open market by a tax-qualified or nontax-qualified employee stock benefit plan of the subsidiary banking institution or subsidiary holding company in an amount reasonable and appropriate to fund such plan.
- (d) is limited to stock repurchases of no greater than 5% of the outstanding capital stock of the subsidiary banking institution or subsidiary holding company where compelling and valid business reasons are established to the satisfaction of the Commissioner.

(5) Restrictions on waiver of dividends. No mutual holding company may waive its right to receive any dividend declared by a subsidiary unless either:

- (a) no insider of the mutual holding company, associate of an insider, or tax-qualified or nontax-qualified employee stock benefit plan of the mutual holding company holds any share of stock in the class of stock to which the waiver would apply; or
- (b) the mutual holding company provides the Commissioner with written notice of its intent to waive its right to receive dividends 30 days prior to the proposed date of payment of the dividend, and the Commissioner does not object. The Commissioner shall not object to a notice of intent to waive dividends if:
 - 1. the waiver would not be detrimental to the safe and sound operation of the subsidiary banking institution; and
 - 2. the board of directors of the mutual holding company expressly determines that waiver of the dividend by the mutual holding company is consistent with the directors' fiduciary duties to the mutual members of such company. A dividend waiver notice shall include a copy of the resolution of the board of directors of the mutual holding company, in form and substance satisfactory to the Commissioner, together with any supporting materials relied upon by the board, concluding that the proposed dividend waiver is consistent with the board's fiduciary duties to the mutual members of the mutual holding company.
- (c) A subsidiary holding company may issue one or more classes of common stock, including separate classes of common stock to the mutual holding company and minority stock holders, subject to the Commissioner's prior written approval, provided that the terms of such classes of stock are consistent with the board's fiduciary duties to the mutual members of the mutual holding company.

(6) Restrictions on issuance of stock to insiders. A subsidiary of a mutual holding company that is not a subsidiary banking institution or subsidiary holding company may issue stock to any insider, associate of an insider or tax-qualified or nontax-qualified employee stock benefit plan of the mutual holding company or any subsidiary of the mutual holding company, provided that such persons or plans provide written notice to the Commissioner at least 30 days prior to the stock issuance. Subsidiary banking institutions and subsidiary holding companies may issue stock to such persons only in accordance with 209 CMR 33.27.

(7) Commitments relative to future stock issuance and mutual holding company conversion plans.

- (a) A mutual banking institution reorganizing into a mutual holding company under 209 CMR 33.23 through 209 CMR 33.26 shall provide the Commissioner a written commitment relative to any future plans to issue securities under 209 CMR 33.27 through 209 CMR 33.29 or to fully convert the reorganized mutual holding company under 209 CMR 33.32 through 209 CMR 33.41. Commitments shall be reasonably specific as to the time period and circumstances under which any stock issuance or conversion would occur.

33.30: continued

- (b) A subsidiary of a mutual holding company initially issuing securities under 209 CMR 33.23 through 209 CMR 33.26 shall provide the Commissioner a written commitment relative to any future plans to fully convert the reorganized mutual holding company under 209 CMR 33.32 through 209 CMR 33.41. Commitments shall be reasonably specific as to the time period and circumstances under which any conversion would occur. Such commitment shall be for a minimum period of three years from the date of its reorganization under 209 CMR 33. 23 through 209 CMR 33.26 or three years from the date of its initial stock issuance under 209 CMR 33.27 through 209 CMR 33.29.
- (c) The Commissioner may waive the written commitments made under 209 CMR 33.30(7) for supervisory reasons or compelling and valid business reasons established to the satisfaction of the Commissioner.

33.31: Subsidiary Holding Companies

- (1) Formation. A mutual holding company may establish a subsidiary holding company as a direct subsidiary to hold 100% of the stock of its subsidiary banking institution. The formation and operation of the subsidiary holding company may not be utilized as a means to evade or frustrate the purposes of M.G.L. c.167H or 209 CMR 33.21 through 33.32. A subsidiary holding company shall be subject to the Commissioner's supervision, regulation, and examination to the same extent as a mutual holding company under M.G.L. c. 167H and M.G.L. c. 167A. The subsidiary holding company may be established either at the time of the initial mutual holding company reorganization or at a subsequent date, subject to the approval of the Commissioner.
- (2) Stock issuances. For purposes of 209 CMR 33.27 through 209 CMR 33.29, the subsidiary holding company shall be treated as a subsidiary banking institution issuing stock and shall be subject to the requirements of 209 CMR 33.27 through 33.29. In the case of a stock issuance by a subsidiary holding company, the aggregate amount of outstanding common stock of the subsidiary banking institution owned or controlled by persons other than the subsidiary holding company's mutual holding company parent at the close of the proposed issuance shall be less than 50% of the subsidiary holding company's total outstanding common stock.

33.32: Scope of Subpart D

209 CMR 33.32 through 33.41 establish procedures and requirements for the conversion of a mutual holding company as defined under 209 CMR 33.22 into stock form. The purpose of this Subpart is to protect and preserve the interests and rights of members who are depositors of a resulting subsidiary banking institution or acquiree subsidiary banking institution of a converting mutual holding company. In the event of a conflict between the conversion provisions of 209 CMR 33.32 through 33.41 and the provisions of 209 CMR 33.01 through 33.12, and 33.21 through 33.31 the latter provisions shall control unless the Commissioner determines that depositor interests or the context otherwise requires. Nothing contained in 209 CMR 33.32 through 33.41 shall limit the ability of the Commissioner to consider other information in determining whether to approve an application to convert a mutual holding company to stock form.

Except as the Commissioner may otherwise determine, the provisions of this part shall govern the conversion of mutual holding companies to holding companies in stock form, and no mutual holding company shall convert to the capital stock form without the prior written consent of the Commissioner.

33.33: Definitions

Terms used in 209 CMR 33.32 through 33.41 which are defined in 209 CMR 33.02 or 209 CMR 33.22 shall have the definitions set forth therein, unless the context requires otherwise, and to the extent such definitions are not inconsistent with the definitions contained in this subpart. All other terms used in 209 CMR 33.32 through 33.41, shall be defined as follows, unless the context otherwise requires:

Amount. The term "amount", when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares, and the number of units if relating to any other kind of security.

33.33: continued

Applicant. An "applicant" is a mutual holding company as defined under 209 CMR 33.22 which has applied to convert to stock form pursuant to 209 CMR 33.32 through 33.41.

Capital Stock. The term "capital stock" refers to stock issued by a converting mutual holding company which complies with the requirements of 209 CMR 33.32 through 33.41 and includes any type of equity security permitted under M.G.L. c. 156B.

Eligible account holder. The term eligible account holder means any person holding a qualifying deposit in a resulting subsidiary banking institution or an acquiree subsidiary banking institution of the converting mutual holding company. This term shall not include any holder of stock in a subsidiary banking institution or a subsidiary holding company of the converting mutual holding company that does not hold a qualifying deposit in a resulting subsidiary banking institution or an acquiree subsidiary banking institution of the converting mutual holding company.

33.34: Mutual Holding Company Conversions To Stock Form

A mutual holding company may convert to stock form only upon satisfaction of the following conditions:

- (1) The Plan of Conversion is approved by the board of trustees or directors of the converting mutual holding company.
- (2) The Plan of Conversion is filed with the Commissioner and the Commissioner has given written approval of the proposed conversion.
- (3) A Plan of Conversion is approved by the corporators of the mutual holding company or members of its resulting subsidiary banking institution(s) or acquiree subsidiary banking institution(s), pursuant to an offering circular or prospectus which substantially conform to 209 CMR 33.04(1) as determined by and approved in advance by the Commissioner, subject to the following requirements:
 - (a) In the case of a resulting subsidiary banking institution or acquiree subsidiary banking institution which is a savings bank, such Plan of Conversion shall be approved by a majority of the total votes of its mutual holding company's corporators and a majority of independent corporators who shall constitute not less than 60% of all corporators, eligible to be cast at the annual meeting or at a special meeting called, in accordance with the mutual holding company's bylaws; or
 - (b) In the case of a resulting subsidiary banking institution or acquiree subsidiary banking institution which is a co-operative bank, such Plan of Conversion shall be approved by a majority of its members, present and voting in each case at the annual meeting or at a special meeting called, in accordance with the mutual holding company's bylaws.
- (4) All necessary regulatory approvals have been obtained and all conditions specified in 209 CMR 33.32 through 33.41 or otherwise imposed by the Commissioner in connection with granting of the approvals specified in 209 CMR 33.34(4) have been satisfied.
- (5) The Plan of Conversion would not result in any reduction of the converting mutual holding company's assets and net worth;
- (6) The conversion would not result in a taxable reorganization of the applicant under the Internal Revenue Code of 1986, as amended;
- (7) Any resulting subsidiary banking institution and acquiree subsidiary banking institution of the converting mutual holding company shall have its accounts insured by the Federal Deposit Insurance Corporation and any excess insurer.

33.35: Procedural Requirements and Review Standards for Conversions

- (1) Procedural Requirements. An applicant desiring to convert in accordance with 209 CMR 33.32 through 33.41 shall file an application for approval of the Plan of Conversion in the form required by the Commissioner pursuant to 209 CMR 33.23(4) and 209 CMR 33.04, unless the context requires otherwise, and to the extent that the provisions of 209 CMR 33.23(4) and 209 CMR 33.04 are not inconsistent with 209 CMR 33.34. The procedural and substantive requirements of 209 CMR 33.01 through 33.12, shall apply to all mutual holding company conversions to stock form undertaken pursuant to 209 CMR 33.32 through 33.41, unless inapplicable or inappropriate, as determined by the Commissioner.
- (2) Grounds for Approval of Conversions. The Commissioner may approve a proposed mutual holding company conversion to stock form pursuant to 209 CMR 33.32 through 33.41 if:
 - (a) the formation of a stock holding company will be fair and not prejudicial to the depositors of all its resulting subsidiary banking institution(s);
 - (b) the public interest will be served by the proposed conversion of the mutual holding company to stock form;
 - (c) approval will not result in unsafe or unsound banking practices;
 - (d) the financial and management resources of the converting mutual holding company are satisfactory; and
 - (e) the competence, character, and banking experience of the converting mutual holding company and its resulting subsidiary banking institutions or other bank subsidiaries, including their record of compliance with applicable laws and regulations, are satisfactory.
- (3) Grounds for Disapproval of Conversions. The Commissioner may disapprove a proposed mutual holding company conversion pursuant to 209 CMR 33.32 through 33.41 if:
 - (a) disapproval is necessary to prevent unsafe and unsound practices;
 - (b) the financial or managerial resources of the converting mutual holding company or any of its resulting subsidiary banking institution(s) or other bank subsidiaries warrants disapproval;
 - (c) the proposed capitalization of the converting mutual holding company fails to meet the requirements of 209 CMR 33.32 through 33.41;
 - (d) a stock issuance is proposed in connection with the conversion pursuant to 209 CMR 33.32 through 33.41 that fails to meet the standards established therein;
 - (e) the converting mutual holding company or any of its resulting subsidiary banking institutions or other bank subsidiaries fails to furnish the information required to be included in the Plan of Conversion or Application or any other information requested by the Commissioner in connection with the proposed conversion; or
 - (f) the proposed conversion would violate any provision of law.
- (4) Capitalization.
 - (a) The Commissioner shall disapprove a proposal by a mutual holding company to convert to stock form and thereby capitalize a stock holding company in an amount in excess of a nominal amount if immediately following the conversion, or shortly thereafter subject to the Commissioner's approval any or all of its resulting subsidiary banking institutions or other bank subsidiaries would fail to be "adequately capitalized" as defined under 12 CFR Part 325, unless otherwise modified by the Commissioner.
 - (b) Proposals by mutual holding companies intending to convert to stock form shall also comply with any applicable statutes, regulations or policies of the Commissioner governing capital distributions by subsidiary banking institutions in effect at the time of the conversion. (Approval of a Plan of Conversion by the Commissioner pursuant to 209 CMR 33.32 through 33.41 shall also be deemed to constitute Commissioner approval under any regulation or policy of the Commissioner governing capital distributions by subsidiary banking institutions, subject to any conditions imposed by the Commissioner.)
- (5) Presumptive Disqualifiers.
 - (a) Managerial resources The factors specified in 12 CFR § 574.7(g)(1)(i) through (g)(1)(vi) shall give rise to a rebuttable presumption that the managerial resources test of 209 CMR 33.35(2)(d) is not met. For this purpose, each place the term "acquiror" appears in 12 CFR § 574.7(g)(1)(i) through (g)(1)(vi), it shall be read to mean the converting mutual holding company or any of its resulting or acquiree subsidiary banking institutions, and the

33.35: continued

reference in 12 CFR § 574.7(g)(1)(v) to filings shall be deemed to include filings under either applicable Massachusetts law or 209 CMR 33.00 *et seq.*

References to the terms "Office of Thrift Supervision" or "Office" in 12 CFR § 574.7(g)(1)(i) through (g)(1)(vi) shall be read to mean the Commissioner or Board of Bank Incorporation if the context so requires.

(b) Safety and soundness and financial resources Failure by a converting mutual holding company to submit a business plan in connection with a Plan of Conversion, or submission of a business plan that projects activities that are inconsistent with community credit needs and the public interest, or that fails to demonstrate that the capital of the converting mutual holding company will be deployed in a safe and sound manner, shall give rise to a rebuttable presumption that the safety and soundness and financial resources tests of 209 CMR 33.35(3)(a) and (3)(b) are not met.

33.36: Contents of Plan of Conversion and Stock Issuance Plans

All the provisions of 209 CMR 33.28(1) and 209 CMR 33.05, shall apply to mutual holding company conversions to stock form, unless inapplicable or inappropriate, as determined by the Commissioner. For these purposes the term "subsidiary banking institution" as it appears in 209 CMR 33.28(1), and the term "converted or converting bank" as it appears in 209 CMR 33.05, shall be deemed to refer to the converting mutual holding company, unless the context requires otherwise. The independent valuation required pursuant to 209 CMR 33.28(1) shall account for the value of dividends waived under 209 CMR 33.30(5) and shall include all assets held by the mutual holding company and its subsidiaries.

33.37: Optional Provisions in Plans of Conversion and Stock Issuance Plans

Notwithstanding any other provisions of 209 CMR 33.32 through 33.41, the Plan of Conversion and Stock Issuance Plan may provide any or all of the optional provisions found in 209 CMR 33.28(2) and 209 CMR 33.06, unless inapplicable or inappropriate, as determined by the Commissioner. For these purposes, the term "subsidiary banking institution" as it appears in 209 CMR 33.28(2) and the term "converted or converting bank" as it appears in 209 CMR 33.06, shall be deemed to refer to the converting mutual holding company, unless the context requires otherwise.

33.38: Information Documents and the Pricing and Sale of Securities

All the provisions of 209 CMR 33.27 as well as 209 CMR 33.07 and 209 CMR 33.08, shall apply to mutual holding company conversions to stock form pursuant to 209 CMR 33.32 through 33.41, unless inapplicable or inappropriate, as determined by the Commissioner. For these purposes, the term "converted or converting bank" as it appears in 209 CMR 33.08 shall be deemed to refer to the converting mutual holding company undertaking the stock issuance, unless the context requires otherwise.

33.39: Restrictions on Stock Repurchases

The provisions of 209 CMR 33.30(4) shall apply to mutual holding company conversions to stock form pursuant to 209 CMR 33.32 through 33.41, unless inapplicable or inappropriate, as determined by the Commissioner.

33.40: Conversions in Connection with Other Corporate Changes

(1) A mutual holding company may convert to stock form, pursuant to 209 CMR 33.32 through 33.41, as part of a transaction in which a holding company is organized to effect such a conversion.

33.40: continued

(2) Any stock issued pursuant to 209 CMR 33.21 through 33.30 by a subsidiary banking institution or subsidiary holding company of a mutual holding company to persons other than the parent converting mutual holding company may be exchanged for the stock issued by the parent converting mutual holding company in connection with the conversion of the parent mutual holding company to stock form. The converting mutual holding company and subsidiary holding company or subsidiary banking institution must demonstrate to the satisfaction of the Commissioner that the basis for the exchange is fair and reasonable.

33.41: Acquisitions in Connection with Conversions

Subject to such terms and conditions the Commissioner may require, a mutual holding company fully converting to stock form pursuant to 209 CMR 33.32 through 209 CMR 33.41, may, as part of the conversion or in a subsequent transaction, acquire all of the capital stock of a bank holding company or a stock form bank; provided that such acquisition shall not be the functional equivalent of a merger conversion under M.G.L. c. 168, § 34E or M.G.L. c. 170, § 26E, or an attempt to evade or circumvent such statutes or any future regulations promulgated thereunder. An acquisition will be deemed to be the functional equivalent of a merger conversion if the acquired bank holding company or stock form bank, or its officers, directors or principal stockholders, control the combined entity. Any evasion or circumvention of 209 CMR 33.41 shall constitute grounds for the imposition of sanctions and penalties authorized by 209 CMR 33.11.

REGULATORY AUTHORITY

209 CMR 33.00: M.G.L. c. 167H, § 8; c. 168, § 34C; c. 170, § 26C.